

***United States Court of Appeals
for the Second Circuit***



JOINT APPENDIX

76-7213

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 76-8112

AMALIA HERBIRA ZORIANO SANCHEZ, etc. et al,

Plaintiffs-Appellants.

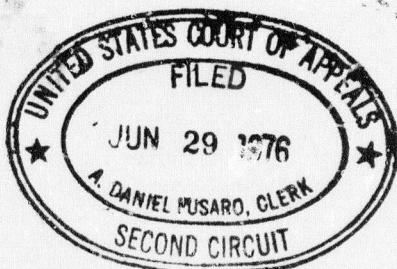
against

CARIBBEAN CARRIERS LIMITED,
BCRDAS DOMINICAN CO.,
BORDAS & COMPANY
BORDAS CORPORATION

Defendants-Appellees.

ON APPEAL FROM THE UNITED
STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK.

JOINT APPENDIX



THOMAS M. BREEN
Attorney for Plaintiffs-
Appellants
160 Broadway
New York, New York 10038
BEEKMAN 3-3740

Submitted By
Plaintiffs-Appellants.

PAGINATION AS IN ORIGINAL COPY

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CIVIL DOCKET
UNITED STATES DISTRICT COURT

D. C. Form No. 104 Rev.

208-1 75 4166 08 21 75 3 340 1

JUDGE DUFFY

Jury demand date:

EN. 4162-
DUFFY

DUFFY, .

208-1 75 4166 08 21 75 3 340 1

ATTORNEYS
e.v.

DRNEY

For plaintiff:

Thomas M. Breen,
160 Broadway, New York, N.Y. 10038
BEEkman 3-3740

VS.

CARIBBEAN CARRIERS LIMITED,

BORDAS DOMINICAN CO.

BORDAS & COMPANY

BORDAS CORPORATION

PLEASE SEE: PAGE 1-A FOR FULL TITLE

For defendant:

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed x	Clerk	AUG 21 1975	56680		
J.S. 6 mailed ✓	Marshal				
Basis of Action: 46 USCA 688 PERSONAL INJURIES AND DEATH	Docket fee Witness fees				
Action arose st:	Depositions				

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORKJUDGE DUFFY
6
75-CV-4166

AMALIA HERBIRA ZORIANO SANCHEZ, as personal representative of the estate of Nicola HERBIRA SANCHEZ, Deceased, APOLINAL REYES YHONSOR, as personal representative of the estate of DESIDERIO REYES, Deceased, MARIA RODRIGUEZ, as personal representative of the estate of JCSE JEREMIA, Deceased, PETRONILA LANTIGUA de FRANCISCO, as personal representative of the estate of JACINTO FRANCISCO, Deceased, and ANDRES A. JOHNSON, as personal representative of the estate of MOTA JOHNSON, Deceased, MERCEDES NATIVIDAD CASTRO, as personal representative of the estate of PEDRO ANTONIO CASTRO, Deceased, MARCIA BOBADILLA ALMONTE, as personal representative of the estate of CRISTIAN LUIS BOBADILLA RUIZ, Deceased, ALTAGRIACIA ESQUEA JIMENEZ, as personal representative of the estate of SOCRATES ESQUEA JIMENEZ, Deceased, JAMES ADOLFO PHIPPS, as personal representative of the estate of JACOB PHIPPS BARRETT, Deceased, FERNANDA CASTILLO, as personal representative of the estate of PEDRO ANTONIO CASTRO GUERRERO, Deceased, JULIAN DE JESUS ALIANZA, as personal representative of the estate of SEGUNDO DE JESUS ALIANZA, Deceased, INOCENCIA VAEZ VIUDA PEREZ, as personal representative of the estate of LUIS FREDIE VAEZ, Deceased, PENEGRILLA ISERCA MEDINA VIUDA DE LOPEZ, as personal representative of the estate of JOSE ANDIO LOPEZ MEDINA, Deceased, CASIRDA REYES DE MORETAS, as personal representative of the estate of SALVADOR E. MORETAS ALIEZ, Deceased, JUANA DE JESUALTOGRACIA MARTINEZ, as personal representative of the estate of AGAPITO SANTANA CASTRO, Deceased, FANNY MERCEDES JARVIS PAULINO DE TEJERA, as personal representative of the estate of JOSE MANUEL TEJERA LOPEZ, Deceased, MARIA MODESTO BOBADILLA, as personal representative of the estate of LUIS BOBADILLA RUIZ, Deceased, MARTIN HERNANDEZ, as personal representative of the estate of JOSE MOSQUERA, Deceased, FRANCIA CARIZAO DE DONADO, as personal representative of the estate of PABLO RAMON DOMADO MONTERO, Deceased, ROSA MARISERZA DE LA CRUZ, as personal representative of the estate of BRAUDILLO PEREZ MENDEZ, Deceased, CARMEN REYES, as personal representative of the estate of ANLIDA VARGA DE LEON, Deceased, JAMES RODRIGUEZ, as personal representative of the estate of ENEMENCIO RODRIGUEZ, Deceased, CANDELERIA R. DE PORTILLO, as personal representative of the estate of AUGUSTO PORTILLO CARO, Deceased, LORENZA REYES, as personal representative of the estate of MARCO ROLANDO REYES, LORENZA REYES, as personal representative of the estate of CAPTAIN CERZO ESQUEA REYES, Deceased,

Plaintiffs

DATE	PROCEEDINGS	DUFFY,
08-21-75	(1) Filed complaint and issued summons.	
08-28-75	(2) Filed summons and return- served the following: Bordas Corp. c/o Byron King Callan by Thomas J. Kane on 08-22-75 Bordas Dominican Co. c/o Byron King Callan by Thomas J. Kane on 08-22-75 Bordas & Co. c/o Byron King Callan by Thomas J. Kane on 08-22-75 Caribbean Carriers Limited c/o Byron King Callan by T.J. Kane on 08-22-75	
09-10-75	(3) Filed defts' affdvt. and notice of motion for an order vacating and setting aside the attempted service of the summons and complaint. Ret. 09-23-75.	
09-16-75	(4) Filed defts' memorandum in support of above motion.	
09-24-75	(5) Filed Order appointing Eugene Starr as process server. CLERK	
09-24-75	(6) Filed Order appointing Dennis Mader as process server. CLERK	
09-25-75	(7) Filed Order appointing Harry A. Ezratty, Esq. as process server. CLERK	
09-26-75	(8) Filed Clerk's Certificate of Mailing of Summons and Complaint by Registered Mail-Return Receipt#487765 on 9-25-75 requested to: Bordas Cominicane Co. aka Bordas Linea Dominicana - REGISTERED - c/o Federico Antun, Corp. de Forento Industrial RECEIPT REC'D Santo Domingo, Republica Cominicane DATED: 10-2-7	
10-10-75	(9) Filed Memorandum of pltffs. in opposition to motion of defts.	
10-10-75	(10) Filed affdvt. and Order in support of Order appointing Luis Ramirez to serve process. So ordered- CLERK	
10-14-75	(11) Filed Pltff's Answering Affidavit by Thomas M. Braen. (Exhib. atta)	
10-31-75	(12) Filed defts' reply affdvt. of Victor S. Cichanowicz to the answering affdvt. of the pltffs.	
10-31-75	(13) Filed reply memorandum of defts.	
11-11-75	(14) Filed Additional Summons With Affidavit of Service by an individual of copy of summons and complaint - (2) by mail to: International Trust Company of Liberia, Monrovia, Liberia on 09-24-75.	
11-14-75	(15) Filed Additional Summons With Affidavit of Service by an individual of copy of summons and complaint - served Bordas Corporation by J. Casuscelli on 09-26-75.	
11-28-75	(16) Filed pltffs' notice of taking deposition of Albert J. Rudick on 12-16-75.	
12-23-75	(17) Filed pltff's request for production of documents	
12-23-75	(18) Filed Order appointing process server. Clerk	
01-14-76	(19) Filed defts' affdvt. and notice of motion for an order vacating pltff's request to produce. Ret. 01-27-76	
01-14-76	(20) Filed defts' memorandum in support of motion.	
01-22-76	(21) Filed "Memorandum and Order- Opinion # 43764-- for the reasons stated, defts motion to dismiss under Rule 12(b) FRCP on the grounds of improper service of process, res judicata, failure to state a claim upon which relief can be granted, and statute of limitations, is granted. So ordered- DUFFY, J. (m/n)	
01-26-76	--- Filed memo endorsed on document #19-- the underlying complaint having been dismissed by Memorandum & Order dated 01-21076, the within motion is denied as moot. So ordered- DUFFY, J. (m/n)	
01-27-76	Filed Judgment- that defts. Caribbean Carriers Limited, Bordas Dominican Co., Bordas & Co., Bordas Corp. have judgment against pltffs, as personal representative of the estate of Nicola Hernandez, deceased, and other pltffs, dismissing the complaint. CLERK (m/n)	
2-2-76	Filed pltff motion for reargument of motion ruled upon in opinion #43764.	
2-2-76	Filed pltff's memorandum in support of above motion.	

(CONT'D - PG #3 - OTHER SIDE)

D. C. 109 Criminal Continuation Sheet

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(page #3)

DATE	PROCEEDINGS
02-18-76	Filed memo endorsed on motion filed 02-02-76-- for the reason stated, upon reconsideration, the original determination is adhered to and the dismissal of the action will stand. So ordered- DUFFY, J.
03-01-76	Filed pltfss' affdvt. and notice of motion for an order extending pltfss' time to take an appeal. Ret. 03-09-76
03-03-76	Filed pltfss' memorandum in support of motion to set aside judgment of dismissal and for other relief.
03-12-76	Filed defts' affdvt. of Victor S. Cichanowicz in opposition to the motion of pltfss.
03-12-76	Filed defts' memorandum in opposition to pltfss' motion.
03-17-76	Filed pltfss' notice of appeal to USCA from the final order and judgment dated 1-27-76 the memorandum and order dated 1-20-76 and the endorsement on the motion for rearugment dated 02-16-76. Copy to Cichanowicz & Callan, Pnt. 03-18-76
04-21-76	Filed memo endorsed on motion filed 03-01-76. Motion ed denied So ordered- DUFFY, J. (m, n)
04-28-76	Filed pltfss' amended notice of appeal to USCA from the final order and judgment dated 1-27-76, the memorandum and order dated 1-20-76 the endorsement on the motion for rearugment dated 2-18-76 and the Order dated 4-19-76 and filed 4-21-76. Copy mailed to: Cichanowicz & Callan.

Yg

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

75-CIV-4166

AMALIA HERBIRA ZORLANO SANCHEZ, as personal representative of the estate of Nicola HERNANDEZ, Deceased, APOLINAL REYES YHONSOR, as personal representative of the estate of DESIDERIO REYES, Deceased, MARIA RODRIGUEZ, as personal representative of the estate of JOSE JEREMIA, Deceased, PETRONILA LANTIGUA de FRANCISCO, as personal representative of the estate of JACINTO FRANCISCO, Deceased, and ANDRES A. JOHNSON, as personal representative of the estate of MOTA JOHNSON, Deceased, MERCEDES MUNIVIDAD CASTRO, as personal representative of the estate of PEDRO ANTONIO CASTRO, Deceased, MARCIA BOBADILLA ALMONTE, as personal representative of the estate of CRISTIAN LUIS BOBADILLA RUIZ, Deceased, ALTACRISTINA ESQUEA JIMENEZ, as personal representative of the estate of SOCRATES ESQUEA JIMENEZ, Deceased, JAIME ADOLFO PHIFFS, as personal representative of the estate of JACOBO PHIFFS BARRITT, Deceased, FERNANDA CASTILLO, as personal representative of the estate of PEDRO ANTONIO CASTRO GUERRA, Deceased, JULIANA DE JESUS ALIANZA, as personal representative of the estate of SEGUNDO DE JESUS ALIANZA, Deceased, INOCENCIA VAREZ VIUDA PEREZ, as personal representative of the estate of LUIS FREDERICK VAREZ, Deceased, PETRONILLA VAREZ MEDINA VIUDA DE LOPEZ, as personal representative of the estate of JOSE ANTONIO LOPEZ MEDINA, Deceased, MARISILDA REYES DE MOPETAS, as personal representative of the estate of SALVADOR E. MORET ALMEZ, Deceased, JUANA DE JESUALTOGRACIA MARTINEZ, as personal representative of the estate of AGAPITO SANTANA CASTRO, Deceased, RAINY MERCEDES JARVIS PAULINO DE TEJERA, as personal representative of the estate of JOSE MANUEL TEJERA, Deceased, LOPEZ, Deceased, MARIA MODESTO BOBADILLA, as personal representative of the estate of LUIS BOBADILLA RUIZ, Deceased, MARTIN HERNANDEZ, as personal representative of the estate of JOSE MOSQUERA, Deceased, FRANCIA JARILAO DE DOMADO, as personal representative of the estate of PABLO RAMON DOMADO MONTERO, Deceased, ROSA MARISERZA DE LA CRUZ, as personal representative of the estate of BRAUDILLO PEREZ MENDEZ, Deceased, CARMEN REYES, as personal representative of the estate of ANIADA VARGA DE LEON, Deceased, JAIME RODRIGUEZ, as personal representative of the estate of ENEMENCIO RODRIGUEZ, Deceased, CANDELARIA R. DE PORTILLO, as personal representative of the estate of AUGUSTO PORTILLO CHACO, Deceased, LORENZA REYES, as personal representative of the estate of MARCO ROLANDO REYES, LORENZA REYES, as personal representative of the estate of CAPTAIN CARZO ESQUEA REYES, Deceased,

Plaintiffs, :

- against - :

CARIBBEAN CARRIERS LIMITED, BORDAS DOMINICAN CO., :
BORDAS & COMPANY, BORDAS CORPORATION, :

Defendants, :

X

ACTION UNDER SPECIAL RULE FOR
SEAMEN TO SUE WITHOUT SECURITY
AND PRELIMINARY FEES FOR
ENFORCEMENT OF LAWS OF THE UNITED
STATES FOR THE PROTECTION OF HEALTH
AND SAFETY AT SEA

The plaintiffs, by THOMAS M. BREEN, their attorney, complaining of the defendants, allege upon information and belief:

FIRST: That at all the times hereinafter mentioned, the above named defendant CARIBBEAN CARRIERS LIMITED, was and now is a foreign corporation with an office for the regular transaction of business within the City of New York, State of New York, and at all times was and is doing business in said City and State.

SECOND: That at all the times hereinafter mentioned, the above named defendant, BORDAS DOMINICAN CO., was and now is a foreign corporation with an office for the regular transaction of business with the City of New York, State of New York, and at all times was and is doing business in said City and State.

THIRD: That at all the times hereinafter mentioned, the above named defendant, BORDAS & COMPANY, was and now is a foreign corporation with an office for the regular transaction of business with the City of New York, State of New York, and at all times was and is doing business in said City and State.

FOURTH: That at all the times hereinafter mentioned, the above named defendant BORLAS CORPORATION, was and now is a domestic corporation with an office for the regular transaction of business with the City of New York, State of New York, and at all times was and is doing business in said City and State.

FIFTH: That all of the above named decedents died intestate on a voyage of the M.V. CARIBE on or about October 10th, 1971.

SIXTH: That before his death, each decedent was in good health, in possession of his faculties, capable of working and each of the above named decedents actually did perform his duties as a seaman.

SEVENTH: That all of the above named defendants are connected with directors and officers of the four defendants having a similar interest.

EIGHTH: That the stockholders in these defendants are the same or nearly the same so as to create a similarity of interests.

NINTH: That at all the times hereinafter mentioned, the defendants owned and M.V. CARIBE.

TENTH: That at all the times hereinafter mentioned, the defendants operated, managed, controlled, provisioned and supplied the M.V. CARIBE.

ELEVENTH: That at all the times hereinafter mentioned, each of the above named decedents, was in the employ of the defendants aboard the M.V. CARIBE as a seaman.

TWELFTH: That on or about October 10, 1971, each of the above named decedents was caused to sustain serious and painful personal injuries while in the employ of the defendants on board the M.V. CARIBE.

THIRTEENTH: That the said injuries were not caused through any fault of want of care on the part of the said decedents but wholly and solely by reason of the dangerous, defective and unseaworthy condition of the vessel and its appliances and the negligence of the defendants, their agents and employees.

FOURTEENTH: That by reason of said injuries, the said decedents were disabled, underwent conscious pain and suffering and mental anguish, were prevented from attending to their work, lost sums of money which they otherwise would have earned, and were ~~permanently~~ injured during their lifetime, all to their damage, the damage of their estates, dependents and next of kin.

FIFTEENTH: That at all the times hereinafter mentioned the M.V. CARIBE was an American Merchant vessel.

SIXTEENTH: That beginning in 1971, the said decedents and the defendants entered into an employment contract whereby the decedents were to serve as seamen aboard vessels of the defendants for regular monthly wages and found.

SEVENTEENTH: That during the time the defendants owned and controlled the M.V. CARIBE, the vessel visited United States ports, including the Commonwealth of Puerto Rico.

EIGHTEENTH: That the base of the defendants with reference to the operation and control of the M.V. CARIBE, is in the Commonwealth of Puerto Rico and states of the United States.

NINETEENTH: That the principal contacts of the vessel and the corporations owning and operating the vessel are with the Commonwealth of Puerto Rico, Territories and Possessions of the United States and states of the United States.

TWENTIETH: That the most appropriate forum for this action is in the courts of the United States of America.

TWENTY-FIRST: That the majority of the corporate stock of the defendants is owned, directly or indirectly, by citizens and residents of the United States.

TWENTY-SECOND: That the defendants were entirely operated and controlled by citizens of the United States of America.

TWENTY-THIRD: That citizens of the United States formed a foreign corporation and placed the M.V. CARIBE under a Liberian flag.

TWENTY-FOURTH: That the said decedents were seamen and that this action is brought to recover damages for personal injuries under a Federal Statute, to wit: Section 13 of the Merchant Seamen's Act of June 5, 1920, amending Section 20 of the Seamen's Act of March 4th, 1915 and jurisdiction herein is claimed by virtue of said statute.

TWENTY-FIFTH: That the negligence of the defendants and the unseaworthiness of the vessel M.V. CARIBE, consist of the following items:

1. Permitting leaks in the ship in the vicinity of the number 3 hatch.
2. Failure to stow cargo properly on the ship.
3. Failure to complete and thoroughly inspect the repairs to the vessel at the previous dry-docking.
4. Permitting the vessel to sail with a list.
5. Failing to rectify said listing of the ship after due notice was given.
6. Failure to have shift boards or other material to prevent shifting of cargo.

7. Not taking into account stress factors and a proper metacentric height of the ship in the weather that could be expected on its final voyage.
8. Permitting defective radio communications to exist aboard the vessel.
9. Not following proper ballast procedures aboard the ship.
10. Failure to take into proper account supplies of water and bunkers so that the vessel could be properly loaded and trimmed.
11. Not having a complete and thorough dry-docking so that repairs on a deficiency list could be completed.
12. Use of the vessel for carrying bulk cargo when the vessel was not designed for such transportation.
13. Improper life saving equipment.
14. Failure to call for rescue in due time so that the vessel and crew could be saved.
15. The captain and the officers of the vessel as well as the officers of the defendants had knowledge and privity of the unseaworthiness and defective conditions of the vessel.
16. Improper maintenance and inspection of the vessel before its final voyage.
17. Failure to provide a safe place for the decedents to work.

18. Failure to provide sufficient and
adequate personnel to operate the ship.

TWENTY-SIXTH: That at all the times herein-
after mentioned, the defendants were and still are acting
as agents for an undisclosed principal.

TWENTY-SEVENTH: That the plaintiffs were not
aware of all their legal rights.

TWENTY-EIGHTH: That the defendants knew
of the events giving rise to the injuries and deaths of the
plaintiffs.

TWENTY-NINTH: That a report was made to the
defendants about the aforesaid events.

THIRTIETH: That witnesses have been and still
are available for interrogation and investigation by the
defendants.

THIRTY-FIRST: That one Diego Bordas has
threatened some of the plaintiffs and alleged that the M.V.
CARIBE was in the possession of the Government of Cuba.

THIRTY-SECOND: That there has been no unreasonable
delay by the plaintiffs in bringing this action.

THIRTY-THIRD: That there has been no consequent
prejudice to the defendants by the prosecution of this action.

THIRTY-FOURTH: That the personal representatives
are duly empowered to represent the estates of the decedents
and to bring this law suit.

PLAINTIFFS FOR A SECOND CAUSE OF ACTION, REPEAT AND REALLEG
PARAGRAPHS FIRST THROUGH TWENTY-THIRD AND TWENTH-FIFTH THROUGH THIRTY-FOURTH, AND IN ADDITION THERETO, ALLEGE UPON INFORMATION AND BELIEF:

THIRTY-FIFTH: That said injuries were not caused by any fault of want of care on the part of the decedents but wholly and solely by reason of the unseaworthiness of the said vessel, M.V. CARIBE.

THIRTY-SIXTH: That by reason of said injuries, the decedents were disabled, underwent conscious pain and suffering and mental anguish, were prevented from attending to their work, lost sums of money which they otherwise would have earned, and were permanently injured during their lifetime, all to their damage, the damage of their estates, dependents and next of kin.

THIRTY-SEVENTH: That jurisdiction in this cause of action is based upon the General Maritime Law.

PLAINTIFFS FOR A THIRD CAUSE OF ACTION, REPEAT AND REALLEG
PARAGRAPHS FIRST THROUGH THIRTY-FOURTH, AND IN ADDITION THERETO, ALLEGE UPON INFORMATION AND BELIEF:

THIRTY-EIGHTH: That the decedents were seamen, and this action was brought to recover damages for death, under a Federal Statute, to wit, Section 33 of the Merchant Seamen's Act of June 5, 1920, amending Section 20 of the Seamen's Act of March 4, 1915 and jurisdiction herein is claimed by virtue of said statute.

THIRTY-NINTH: That on or about October 10, 1971, the said decedents were caused to sustain serious and painful personal injuries while in the employ of the said defendants on board the M.V. CARIBE.

FORTIETH: That as a result of sustaining said injuries, the decedents died leaving surviving dependents and next of kin.

FORTY-FIRST: That said deaths were not caused by any fault or want of care on the part of the decedents, but wholly and solely by reason of the dangerous, defective and unseaworthy condition of said vessel, its appliances and the negligence of the defendants, their agents and employees.

FORTY-SECOND: That by reason of said deaths, damages and pecuniary loss were sustained by their estates, dependents and next of kin.

PLAINTIFFS FOR A FOURTH CAUSE OF ACTION REPEAT AND REALLEGエ EACH AND EVERY ALLEGATION HEREINBEFORE SET FORTH IN PARAGRAPHS FIRST THROUGH TWENTY-THIRD AND FROM TWENTY-FIFTH THROUGH THIRTY-FOURTH AND IN ADDITION THEREETO ALLEGE ON INFORMATION AND BELIEF:

FORTY-THIRD: That jurisdiction in this cause of action is based upon the General Maritime Law.

FORTY-FOURTH: That on or about October 10, 1971, the said decedents were caused to sustain serious and painful personal injuries while in the employ of the said defendants on board the M.V. CARIBE.

FORTY-FIFTH: That as a result of the decedents sustaining said injuries, the unseaworthiness of the personnel aboard the ship in that they did not measure up to the ordinary standards of the calling, violations of the General Maritime Law, and the unseaworthiness of the vessel, the decedents died leaving surviving dependents and next of kin.

FORTY-SIXTH: That said deaths were not caused by any fault or want of care on the part of the decedents, but wholly and solely by reason of the unseaworthiness of the said M.V. CARIBE.

FORTY-SEVENTH: That by reason of said deaths, damages and pecuniary loss were sustained by their estates, dependents and next of kin.

PLAINTIFFS FOR A FIFTH CAUSE OF ACTION REPEAT AND REALLEG EACH AND EVERY ALLEGATION HEREINBEFORE SET FORTH IN PARAGRAPHS FIRST THROUGH TWENTY-THIRD AND TWENTY-FIFTH THROUGH THIRTY-FOURTH AND IN ADDITION THERETO ALLEGE UPON INFORMATION AND BELIEF:

FORTY-EIGHTH: That at all the times hereinafter mentioned, the vessel flew the flag of Liberia.

FORTY-NINTH: Plaintiffs also rely upon the laws of Liberia and respectfully call the attention of this Honorable Court to the provisions of said laws, including those set forth in this complaint.

FIFTIETH: Upon information and belief, the Liberian Code of Laws of 1965 was adopted by the Registry of the Republic of Liberia on March 22, 1965; and was prepared for the Republic of Liberia by the Codification Project, Cornell University, under the direction of Milton R. Konvitz; and said Liberian Code is set forth and contained in three (3) volumes published by Cornell University Press 1957.

FIFTY-FIRST: The Liberian Code of Laws which is designated as "Maritime Law", contains and includes the following provisions:

"Insofar as it does not conflict with any other provisions of this Title, the non-statutory general Maritime Law of the United States of America is hereby declared to be and is hereby adopted as the General Maritime Law of the Republic of Liberia".

* * * * *

"All causes of action arising out of or under this Act are hereby declared and shall be cognizable before the Circuit Courts of the Republic, sitting in Admiralty, but, except as otherwise specifically provided in this Act, the provisions of this Title shall not be deemed to deprive other Courts of Liberia or elsewhere, with jurisdiction to enforce such causes of action."

* * * * *

"Nothing in these rules shall exonerate any vessel, or the owner, master or crew thereof, from the consequences of any neglect to carry lights or signals, to keep a proper lookout, or to take any precautions which shall be required either by the ordinary practice of seamen or by the special circumstances of the case".

FIFTY-SECOND: Upon information and belief, that part of the Liberian Code of Laws which is designated as the "Injuries Law" of Liberia contains and includes the following provisions:

"A tort injury is an unlawful damage. Every act prejudicial to the interest of another is an injury unless it is warranted by law".

* * * * *

"An act may constitute an injury even though the actor did not intend to injure the person affected. An injury may be committed due to negligence, carelessness, or unskillfulness design on the part of the injurer."

* * * * *

"All persons, including married women, infants, and incompetents, are capable of committing injuries."

* * * * *

"Every person is liable for all injuries committed by him, subject to the excepts stated in this section."

* * * * *

"Every employer or principal is liable for the injuries committed by his agents or servants while employed in his business."

* * * * *

"The object of a civil action for injuries is to indemnify the injured person, not to punish the injurer; therefore, it follows that the measure of damage is the actual amount of the loss or inconvenience sustained by the injured person without any reference to the degree of misconduct of which the injurer may have been guilty."

FIFTY-THIRD: Upon information and belief, an injured seaman has a cause of action for "unseaworthiness" as that term and doctrine are defined and applied by the "non-statutory General Maritime Law of the United States of America", pursuant to the Liberian Code, Title 22, Chapter 1, Section 30, and by any other provisions which may be applicable.

- 11 -

FIFTY-FOURTH - The Liberian Maritime Regulations contain the following statement:

"2.69A - Transfer Foreign -(1) The owner of a documented vessel, in order to transfer the vessel to a foreign registry, or to leave Liberian registry for any other reason, shall file a written statement setting forth information specified in Section 70 of the Maritime Law.

(2) A Certificate of Cancellation from Liberian Registry shall be issued upon filing with the Commissioner or a Deputy Commissioner or with a Consular or Diplomatic officer of the Republic of Liberia acting under specific instructions from the Commissioner or a Deputy Commissioner of (1) the vessel's Certificate of Registry; (2) Ship Radio Station License, and (3) Bill of Sale (in triplicate) in the event title has been transferred; provided, however, that all outstanding taxes, fees and charges due the Republic of Liberia have first been paid."

The Liberian Maritime Law contains the following provisions:

"SECTION 69A - Transfer Foreign - The owner of a documented vessel who desires to transfer the vessel to a foreign registry may do so provided that there are no unfulfilled obligations to the Republic of Liberia in respect of the vessel. Before such transfer is accomplished the registered owner shall surrender the ship's document to the Commissioner or his duly authorized agent or to a consular or diplomatic officer of the Republic of Liberia.

"SECTION 70 - Application for Surrender of Documents - Before a Certificate of Registry shall be accepted for surrender, the registered owner shall submit to the Commissioner or a Deputy Commissioner a written application specifying the name of the vessel, the reasons for the proposed surrender, the name and nationality of the proposed new owner, if any, and, if a transfer to foreign registry is contemplated, the name of the country to whose registry transfer is desired."

FIFTY-FIFTH - The 1953 Geneva Convention on the High Seas codifies the rules of International Law on the legal transfer of registration of vessels; this convention is contained in Volume 8, page 1460 of British Shipping Laws edited Nagendra Singh, published by Stevens & Sons, second edition, 1973. The pertinent provisions follow:

"Article 5 - 1. Each State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are intended to fly. There must exist a genuine link between the State and the ship, in particular, the State must effectively exercise its jurisdiction and control in administrative, technical and special matters over ships flying its flag.

"2. Each State shall issue to ships to which it has granted the right to fly its flag documents to that effect.

"Article 6 - 1. Ships shall sail under the flag of one State only, and, save in exceptional cases expressly provided for in international treaties or in these articles, shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry.

"2. - A ship which sails under the flags of two or more States, using them according to convenience, may not claim any of the nationalities in question with respect to any other State, and may be assimilated to a ship without nationality.

"Article 18 - A ship or aircraft may retain its nationality although it has become a pirate ship or aircraft. The retention or loss of nationality is determined by the law of the State from which such nationality was originally derived."

FIFTY-SIXTH - That any purported change of registration and flag from Liberia to any other country before October 10, 1971 was ineffective and illegal, with respect to the M.V. CARIBE.

PLAINTIFFS FOR A SIXTH CAUSE OF ACTION
REPLATE AND REALLEGUE EACH AND EVERY
ALLEGATION HEREINBEFORE SET FORTH IN
PARAGRAPHS FIRST THROUGH TWENTY-THIRD,
TWENTY-FIFTH THROUGH THIRTY-FOURTH,
FORTY-EIGHTH THROUGH FIFTY-SIXTH AND
IN ADDITION THERETO ALLEGE UPON
INFORMATION AND BELIEF:

FIFTY-SEVENTH: Section 337 of the Liberian
Maritime Law, contained in Title 22 of the Liberian Code of
Laws of 1956 effective March 1st, 1956 as amended April 23rd,
1964 and effective August 18th, 1964, provides as follows:

"Wrongful Death, ---Notwithstanding anything contained in Title XVII, whenever the death of a seaman, resulting from an injury, shall be caused by wrongful act, omission, neglect or default occurring on board a vessel, the personal representative of the deceased seaman may maintain a suit for damages, for the exclusive benefit of the deceased's wife, husband, parent, child or dependent relative, against the vessel, person or corporation which would have been liable if death had not ensued. (Eff. Aug. 18, 1964).

PLAINTIFFS FOR A SEVENTH CAUSE OF ACTION REPEAT AND REALLEGGE EACH AND EVERY ALLEGATION HEREINBEFORE SET FORTH IN PARAGRAPHS FIRST THROUGH TWENTY-THIRD AND TWENTY-FIFTH THROUGH THIRTY-FOURTH AND IN ADDITION THERETO ALLEGE UPON INFORMATION AND BELIEF:

FIFTY-EIGHTH - That the decedents were seamen and their death occurred on the high seas beyond a marine league from the shore of any State or dependency of the United States.

FIFTY-NINTH - This cause of action is brought under the provisions of the Death on the High Seas Act 46 USC 761, et. seq., with the right to plead any applicable foreign law under Section 764.

SIXTIETH - That by reason of the allegations in the Seven Causes of Action in this complaint, each plaintiff has been individually damaged in the sum of THREE HUNDRED FIFTY SEVEN THOUSAND (\$357,000.00) DOLLARS.

WHEREFORE, each plaintiff individually demands judgment against the defendants in the sum of THREE HUNDRED FIFTY SEVEN THOUSAND (\$357,000.00) DOLLARS, together with the costs and disbursements of this action.

THOMAS M. BRENN
Attorney for Plaintiffs
Office & Post Office Add.
160 Broadway
New York, New York 10038
telephone No. 233-3740

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NOTICE OF TAKING
DEPOSITION

AMALIA HERBIRA ZORIANO SANCHEZ, :
as personal representative of the estate
of NICOLA HERNANDEZ, Deceased,
et al , :

Plaintiffs, :

-against- :

CARIBBEAN CARRIERS LIMITED,
et al , :

Defendants. :

x

S I R S :

PLEASE TAKE NOTICE that the plaintiffs, by their attorney,
will take the deposition upon oral examination of CARIBBEAN
CARRIERS LIMITED, by its Vice-President Byron King Callan, Esq.
pursuant to the Federal Rules of Civil Procedure before a Notary
Public, or before some other authorized officer, at Room 1100
East, 160 Broadway, New York, New York, on the 23rd day of
September, 1975, at 2:00 P.M. or on a lawfully adjourned day, and
from day to day thereafter until the examination is completed, and
this defendant is to bring all documents, books of accounts,
correspondence, and all other records showing the transactions with
the other defendants.

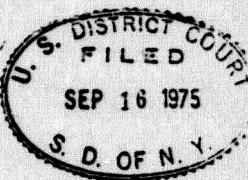
Dated: New York, New York

August 21st, 1975

Yours, etc.,

THOMAS M. BREEN
Attorney for Plaintiffs
Office & P.O. Address
160 Broadway
New York, New York 10038

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK-----x
AMALIA HERBIRA ZORIANO SANCHEZ, as
personal representative of the estate
of NICOLA HERNANDEZ, Deceased, et al..

75 Civ. 4166

Plaintiffs, :

-against-

CARIBBEAN CARRIERS LIMITED, BORDAS
DOMINICAN CO., BORDAS & COMPANY,
BORDAS CORPORATION,NOTICE OF
MOTION

(KTD)

Defendants.

SIRS:

PLEASE TAKE NOTICE that upon the annexed affidavits of VICTOR S. CICHANOWICZ and BYRON KING CALLAN, sworn to the 11th day of September, 1975, the exhibits attached thereto, and the pleadings filed herein, the undersigned will move this Court at Room 506, United States Courthouse, Foley Square, Borough of Manhattan, City and State of New York, on the 23rd day of September, 1975, at two-fifteen (2:15) P.M. in the afternoon, or as soon thereafter as counsel can be heard, for an order, pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, vacating and setting aside the attempted service of the summons and complaint on the named defendants on grounds that service of the summons and complaint is improper, and dismissing the action on the grounds that the matters alleged therein are res adjudicata, fail to state a claim upon which relief can be granted, are barred by the statute of limitations and laches, and the Court lacks jurisdiction over the subject matter of the action; and vacating the notice of deposition served herein, and for such other, further and different relief as the justice of the cause may require.

Dated: New York, New York
September 11, 1975.

To:

THOMAS M. BREEN, Esq.
Attorney for Plaintiffs
160 Broadway
New York, N. Y. 10038

CICHANOWICZ & CALLAN
By: Victor S. Cichanowicz
Member of the Firm
Attorneys for Defendants.
80 Broad Street
New York, N. Y. 10004
344-7042

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK-----x
75 Civ. 4166

Plaintiffs. :

-against- :

AFFIDAVITCARIBBEAN CARRIERS LIMITED, BORDAS :
DOMINICAN CO., BORDAS & COMPANY, :
BORDAS CORPORATION. :

Defendants. :

-----x

STATE OF NEW YORK) ss:
COUNTY OF NEW YORK)

VICTOR S. CICHANOWICZ, being duly sworn, deposes and
says:

That he is a member of the firm of CICHANOWICZ & CALLAN, attorneys, and submits this affidavit in support of the within application on behalf of the defendants to vacate and set aside the service of the summons and complaint and the accompanying notice to examine CARIBBEAN CARRIERS LIMITED before trial and for a dismissal of the action.

That as appears from the annexed affidavit of BYRON KING CALLAN, Esq., the attempted service of the summons and complaint on the defendants and the notice of deposition was improper because the persons or firm on whom service was attempted are not proper parties on whom to make suit service and they have no authority, either by statute or appointment to accept such service.

That as will be shown hereinafter, the present action is nothing more than a further attempt on the part of the plaintiffs' attorney to create a right to a remedy to which the

plaintiffs are not entitled under the actual facts of the case.

As appears from the opinion and order of the Honorable Jose V. Toledo, Chief United States District Judge for the District of Puerto Rico, which is annexed hereto as Exhibit "C", and a copy of the complaint in that action (Exhibit "D"), the same attempt in that Court was dismissed.

The plaintiffs, as Judge Toledo found, are all citizens of the Dominican Republic, who as personal representatives of the estates of some 25 Dominican and Columbian seamen who were employed aboard the M/V CARIBE, a Dominican flag vessel, which disappeared at sea on October 10, 1971 while said vessel was on a voyage from Barranquilla, Columbia to Santa Domingo, in the Dominican Republic.

These representatives seek recovery of damages for the wrongful death which it is claimed the Dominican and Columbian decedents suffered as the result of the vessel's disappearance. As the complaint filed herein shows, damages are not sought under the Dominican Law, which is the law of the vessel's flag. Instead, recovery is sought under United States laws and/or the laws of the Republic of Liberia. Although the complaint sets forth seven causes of action, the First and Third Causes of Action are predicated on The Jones Act, 46 U.S.C.A. 688 (Paragraphs Twenty-Fourth and Twenty-Eight); the Second and Fourth Causes of Action seek recovery under the General Maritime Law (Paragraphs Twenty-Seventh and Forty-Third); the Fifth and Sixth Causes of Action invoke the Liberian Law (Paragraphs Forty-Ninth and Fifty-Seventh); and the Seventh Cause of Action is alleged to be based on the provisions of the Death On The High Seas Act, 46 U.S.C.A. 761 et seq. (Paragraph Fifty-Ninth).

It is evident from the opinion and order of the Honorable Jose V. Toledo that the allegations made in the complaint in the within action to support all Seven Causes of Action are incorrect and that the only permissible inference is that they are made for the purpose of misleading this Court. It should be noted that while Judge Toledo based his findings on affidavits, said affidavits were not contradicted by the plaintiffs. The attorney for the plaintiffs in the action in this Court cannot plead ignorance of Judge Toledo's findings or claim that he was not in a position to contest any of the allegations made in the affidavits submitted on behalf of the defendants. Nor for that matter can he claim that the opportunity was not available to him in the Puerto Rican action to conduct discovery and establish facts, were they otherwise than as found by the Court.

As the annexed copy of the summons and complaint in the action in the District Court for Puerto Rico reveals, the attorney for plaintiffs in the present action also was the attorney for the plaintiffs in the action in Puerto Rico. As further appears from said summons, the action in Puerto Rico was commenced on or about January 21, 1972. Judge Toledo did not render his opinion and order until April 17, 1975. Thus more than three years expired between the commencement of the action in Puerto Rico and Judge Toledo's opinion and order. The conclusion is therefore inescapable that plaintiffs' attorney is fully aware of the fact that the allegations in the complaint in the within action cannot be supported and that they are set forth for purposes other than as valid grounds on which to support the causes of action alleged.

The addition of BORDAS DOMINICAN CO. and BORDAS CORPORATION as parties defendant in no way aids the plaintiffs. BORDAS DOMINICAN CO., as far as deponent has been able to ascertain, is unknown. Assuming that BORDAS LINEA DOMINICANA is intended, it affords plaintiffs no basis for recovery under the facts of this case either under the laws of the United States or of Liberia.

As Judge Toledo found, BORDAS LINEA DOMINICANA was a corporation organized and existing under the Laws of the Dominican Republic and from June 25, 1971, as well as the time in question, owned the M/V CARIBE and that during this time it flew the flag of the Dominican Republic. Furthermore, as appears from the affidavit of Diego Bordas, which was submitted on the motion before Judge Toledo and not contradicted by plaintiffs (Exhibit "E"), said Diego Bordas, a citizen and resident of the Dominican Republic was the sole owner of BORDAS LINEA DOMINICANA.

None of the other named defendants therefore are in any way involved with the M/V CARIBE at the time in question, and the allegations in the complaint which are made with respect to them, even if true, do not convert the nationality of the M/V CARIBE or its owner to United States citizenship or give plaintiffs any cause of action under any law other than the law of the vessel's flag. While the base of operations of a shipowner combined with other factors might be sufficient to override the law of the vessel's flag, even though the vessel is owned by a foreign corporation, as Judge Toledo found, the base of operations of the M/V CARIBE was Santo Domingo in the

-/-

Dominican Republic and the M/V CARIBE had not been in any United States port for more than a year; and at the time it was lost at sea it was in transit between Columbia and Santo Domingo with an all Columbian or Dominican crew, all of whom were hired either in Colombia or the Dominican Republic. Thus, no points of contact exist which would support the application of any law other than the law of the vessel's flag. Since, as Judge Toledo further found, there are legal remedies in both the Republic of Colombia and the Dominican Republic and the witnesses or documentary evidence relevant to the case are in either of these countries and their courts are in a better position to compel the parties to produce a disclosure of available documentary or testimonial evidence, there is no valid reason for this Court to invoke its jurisdiction.

Admittedly Judge Toledo was passing on the claims of the plaintiffs insofar as they concerned the District Court of Puerto Rico. His reasoning, however, is equally applicable to this Court assuming that proper service was made in this matter.

If this Court does not dismiss the complaint for the reasons set forth above, it nevertheless must dismiss the action because Jones Act actions and actions under the Liberian Law are time barred after three years and the claims under the General Maritime Law are barred by laches. Actions under the Death on the High Seas Act are barred after two years. These statutes of limitations cannot be tolled but are applied strictly. While laches does permit actions brought after the running of the prescribed period, the plaintiffs' attempt to relitigate the issues

previously determined in another Court is not a valid excuse for bringing an untimely action. Their recourse, if any, is in the Court of Appeals and not another District Court.

Finally, since the Jones Act and Death on the High Seas Act are time barred and the necessary diversity between all the parties is lacking, the action should be dismissed because of lack of jurisdiction over the subject matter of the action.

WHEREFORE, it is respectfully requested that the service of the summons and complaint on all four defendants, and the notice of deposition, be vacated and set aside and the complaint be dismissed with costs or in the alternative, if service is not vacated, the complaint in any event be dismissed and that defendants have such other, further and different relief as may be just and proper.

Victor S. Cichanowicz

Sworn to before me this

day of September, 1975.

JOHN WILLY SCHAFER
NOTARY PUBLIC STATE OF NEW YORK
CITY OF NEW YORK
Term Expires March 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
AMALIA HERBIRA ZORIANO SANCHEZ, :
as personal representative of the
estate of NICOLA HERNANDEZ, Deceased,
et al., : 75 Civ. 4166

Plaintiffs, : AFFIDAVIT

-against-

CARIBBEAN CARRIERS LIMITED, BORDAS :
DOMINICAN CO., BORDAS & COMPANY,
BORDAS CORPORATION,

Defendants.

-----x
STATE OF NEW YORK)
:ss:
COUNTY OF NEW YORK)

BYRON KING CALLAN, being duly sworn, deposes and
says:

That he is an attorney at law and a member of the
firm of CICHANOWICZ & CALLAN with offices at 80 Broad Street
in the City and State of New York.

That deponent is informed that on August 22, 1975
at approximately 8:30 A.M., four copies of the summons and
complaint in the above entitled action, together with a notice
to take the deposition upon oral examination of CARIBBEAN
CARRIERS LIMITED by deponent as Vice-President, was left at
the office of deponent's firm with Thomas Kane, Esq., an
associate attorney, by a person representing himself to be
from the office of The United States Attorney.

That at the aforementioned time deponent was not
in the office and did not arrive in the office on that date
until 10:35 A.M.

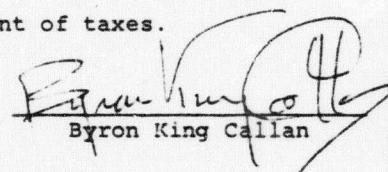
That neither deponent, his firm, Mr. Kane, or anyone associated with or employed by deponent's firm are officers, managing or general agents or persons authorized by appointment or by law to receive service of process on behalf of any of the above named defendants.

That in the past deponent did act as Vice-President of CARIBBEAN CARRIERS LIMITED, a Liberian corporation. Deponent, however, resigned said office several years ago and has had no further relationship or connection with said company. According to deponent's information, CARIBBEAN CARRIERS LIMITED was annulled by the government of Liberia on February 1, 1975. At no time has deponent owned any stock of said company, and to his knowledge at no time was any stock of CARIBBEAN CARRIERS LIMITED owned by citizens or residents of the United States.

That as appears from the annexed Bill of Sale, (Exhibit "A") CARIBBEAN CARRIERS LIMITED owned the M/V CARIBE until June 25, 1971. On said date she was sold to BORDAS LINEA DOMINICANA, a Dominican corporation. At that time the M/V CARIBE was deleted from Liberian registry.

That at no time did CARIBBEAN CARRIERS LIMITED act as agents or in any other representative capacity for BORDAS LINEA DOMINICANA.

That as appears from the Bulletin published by the Department of State of the State of New York (Exhibit "B"), BORDAS CORPORATION is non-existent. In December 1974, it was dissolved by proclamation for nonpayment of taxes.



Byron King Callan

Sworn to before me this
day of September, 1975.

or
STEAMSHIP "CARIBE"

CARIBBEAN CARRIERS LIMITED OF MONROVIA LIBERIA

to

BORDAS LINEA DOMINICANA

KNOW ALL MEN BY THESE PRESENTS, that CARIBBEAN CARRIERS LIMITED OF MONROVIA LIBERIA a corporation organized and existing under the laws of the Republic of Liberia (hereinafter called "Vendor"), being the sole owner of the Steamship "CARIBE" official number 2393, highest class American Bureau of Shipping of 3864 tons gross and 2156 tons net register, formerly documented under the laws of the Republic of Liberia for, and in consideration of the sum of TEN DOLLARS (\$10.00), lawful money of the United States, and other good and valuable consideration to it in hand paid before the ensealing and delivery of these presents by BORDAS LINEA DOMINICANA (hereinafter called the "Vendee") the receipt of which consideration is hereby acknowledged, has bargained and sold and transferred and by these presents does bargain sell and transfer unto the said BORDAS LINEA DOMINICANA, its successors and assigns, the whole of the single screw Steamship "CARIBE", together with all of her masts, accessories, sails, boats anchors, cables, tackle, engines, outfit, broached stores and provisions equipment, gear, wireless installation, radar and nautical instruments and all other appurtenances thereunto appertaining and belonging, aboard and ashore, except leased equipment, if any, Master's and crew's personal effects, unbroached stores and provisions, fuel oil, linens, glassware, crockery, cutlery, silverware and galley utensils which bear Vendor's insignia.

EXHIBIT "A"

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TO HAVE AND TO HOLD the said vessel and appurtenances
thereunto belonging unto the said BORDAS LINEA DOMINICANA, its
successors and assigns, to its and their sole and proper use,
benefit and behoof forever and the said CARIBBEAN CARRIERS LIMIT-
ED OF MONROVIA LIBERIA hereby warrants and represents said vessel
and the aforesaid appurtenances to be free and clear of all debts,
claims, encumbrances, maritime liens and crew claims, and by these
presents promises, covenants and agrees for itself, its successors
and assigns, to and with the said BORDAS LINIA DOMINICANA, its
successors and assigns, to warrant and defend the title to the
said vessel and all its aforesaid appurtenances against any and
every person whomsoever.

IN WITNESS WHEREOF, the said CARIBBEAN CARRIERS LIMITED
OF MONROVIA LIBERIA has hereunto subscribed these presents this
25th day of June, 1971.

CARIBBEAN CARRIERS LIMITED OF MONROVIA
LIBERIA

By: Brian V. Cole
Vice President

NEW YORK STATE BULLETIN

VOLUME XLVII

DECEMBER 16, 1974

NUMBER 6

PUBLISHED BY THE DEPARTMENT OF STATE, ALBANY, N. Y. PURSUANT TO THE PROVISIONS OF SECTION 160 OF THE EXECUTIVE LAW

PART II

Containing

PROCLAMATION DISSOLVING STOCK
CORPORATIONS PURSUANT TO THE
PROVISIONS OF SECTION 203-A OF THE
TAX LAW AS AMENDED.



MALCOLM WILSON
Governor

JOHN J. GHEZZI
Secretary of State

EXHIBIT "B"

Stock Corporations Dissolved by Proclamation

Bod-Bro 13

Bodega De Oro, Inc. (24)
 Bodell, Gerald H. & Co. Inc. (52)
 Boden-South St Properties, Inc. (52)
 Bonfire Enterprises, Inc. (52)
 Body Manufacturing of Rochester Ltd. (23)
 Body Sculpture, Ltd. (41)
 Body & Skin Health, Inc. (30)
 Boeder, Thomas R. Agency, Inc. (15)
 Boerne, G. B. Inc. (41)
 Boenings Pet Center, Inc. (30)
 Boest Radio & Television Co., Inc. (15)
 Boefreze, Inc. (28)
 Bogacki, J. A. Lumber Co., Inc. (15)
 Bogey's Cafe, Ltd. (31)
 Bohdan Enterprises, Inc. (30)
 Bohem Security Systems, Installations & Services, Inc. (41)
 Boi Li Sportswear, Inc. (31)
 Boilerplate Typing Service, Inc. (30)
 Boilermakers, Inc. (44)
 Boldi Realty Corp. (41)
 Boni Corp. (41)
 Bonic Corp. (41)
 Bonan Ford, Inc. (31)
 Bonand, J. A. Beverage Distributor, Inc. (41)
 Bonanw Realty Corp. (24)
 Bonita Corp. (31)
 Boniard Associates, Inc. (30)
 Boni, M. Realty Corp. (31)
 Boni Inc. (41)
 Bonson, Harry, Inc. (31)
 Bonmar Realty Corp. (24)
 Bonmara Associates, Inc. (31)
 Bonn Buildings, Inc. (24)
 Bonn-Monti Glass Products, Inc. (31)
 Bonn-Monti Glass Sales Station, Inc. (30)
 Bonn-Ray Automotive, Inc. (31)
 Bon Voyage Hotel & Motel Association, Inc. (34)
 Bon Voyage Vacation & Travel Center, Inc. (34)
 Bona-Bav Corporation (24)
 Bona-Troy, Inc. (24)
 Bonac International Corp. (41)
 Bonahide Builders, Inc. (31)
 Bonaire Textiles, Inc. (31)
 Bonanza Import and Export Company of New York, Inc. (30)
 Bonart Corporation, The (31)
 Bonaventure Associates, Inc. (01)
 Bonder Construction Corporation (52)
 Bonell Packaging Co., Inc. (24)
 Boni Color Corporation (34)
 Bonjou, Andrew J., Inc. (52)
 Bonjard, Inc. (60)
 Bonime Productions Ltd. (31)
 Bonique, Inc. (31)
 Bonian Corporation (51)
 Boniapi Products of Tremont, Inc. (03)
 Bonnie Gifts, Inc. (31)
 Boni, Realty Corp. (41)
 Bonsignore, F. R. Construction Company, Inc. (28)
 Bonista Holidays, Inc. (31)
 Boo-Hoo Products Corp. (30)
 Book Browsers Club of America, Inc. (30)
 Book Developers Corporation (31)
 Booken Realty Corp. (31)
 Books & Manuscripts, Inc. (31)
 Books & Records by Mail, Inc. (41)
 Bookstaver, Inc. Corp. (31)
 Bookworm, Inc. The (24)
 Boone Contracting & Painting Corp. (03)
 Boot Barn, Inc. (15)
 Booth Demundus Lumber Co., Inc. (32)
 Boots Off by Irmind, Inc. (24)
 Boots Tavern, Inc. (60)
 Bordes Corporation (31)
 Borealis Sales Co., Inc. (41)
 Borgnese Enterprises, Inc. (31)
 Borgy Realty Corp. (24)
 Borinkes Sporting Goods Corp. (24)
 Borison's Dept. Store, Inc. (24)
 Born Management Corp. (31)
 Borna Properties Inc. (43)
 Boro Pharmacy, Inc. (31)
 Boro Wide Vacuum Repair Inc. (24)
 Borusso, Joe, Inc. (04)
 Bos Painting and Decorating Co., Inc. (03)
 Bosco Coat Corporation (24)
 Bostwick Farm Supplies, Inc. (07)
 Botem Realty Corp. (24)
 Bottino and Angelini Construction Corp. (60)
 Botwinick Painters, Inc. (30)
 Boucher Enterprises, Inc. (31)
 Boulevard Dell Corp. (41)
 Boulevard Development Company Incorporated (33)
 Boulevard Shell, Inc. (24)
 Boulevard Travel, Inc. (24)
 Boulin, Victor J., Inc. (31)
 Boulique, Inc. (31)
 Bouquet Bridal, Inc. (31)
 Bourdeau Shop Rite Store, Inc. (10)
 Bourje, a Fashion Furs, Inc. (31)
 Boutique International, Inc. (15)
 Boutique Ramona, Inc. (31)
 Boutique Records, Inc. (31)
 Boutique Saint-Germain, Inc. (31)
 Boutours, Inc. (31)
 Bouvers Bros., Inc. (31)
 Bouy Lunchedonette, Inc. (03)
 Bowring Corporation (05)
 Bowring, Charles, Associates, Inc. (31)
 Box-O-Manic, Inc. (11)
 Box-Pac Corp. (60)
 Boyce Incorporated (31)
 Boyd, Milton, Racing Corp. (24)
 Boyd & Son Car Service, Inc. (31)
 Boykin Construction Co., Inc. (41)
 Boykin Products, Inc. (31)
 Boys' Travel, Inc. (30)
 Boyland, Toga, Ltd. (31)
 Bradley, Jonathan, Company, Inc. (31)
 Bradley Motors, Inc. (24)
 Bradley Securities Corp. (31)
 Bradley, Andrews, Co., Inc. (03)
 Bradly, Michael, Inc. (31)
 Bragaw, Realty, Inc. (41)
 Brath Motivational Concepts, Inc. (24)
 Brannin International, Ltd. (31)
 Brant Foods, Inc. (31)
 Brannhill Fallon & Co., Inc. (31)
 Brancatelli Construction Corp. (52)
 Branch Homes, Inc. (30)
 Branch International, Inc. (31)
 Brandiford & Co. Incorporated (31)
 Brandmaier Realty & Holding Corp. (41)
 Brandon by Peabody House, Ltd. (31)
 Brandon Shores, Inc. (36)
 Brandon International, Inc. (41)
 Brandt & Freeman International, Ltd. (51)
 Brandt Steel Products, Inc. (24)
 Brandycrest, Inc. (56)
 Branch Cleaners, Inc. (24)
 Brankap Construction Corp. (36)
 Brant Lake Heights, Inc. (57)
 Branwell Industries, Inc. (31)
 Brasabuttons Music Corporation (28)
 Brassner, Jules, Gallery, Inc. (31)
 Braunschbach Industries, Inc. (52)
 Braunstein-Stern Fur Dressers, Inc. (31)
 Braverman, B., Inc. (31)
 Braydon & Chapman Music Company, Inc. (07)
 Brazil South Holdings, Inc. (31)
 Brazil Brokerage Corporation (31)
 Breaditane, Inc. (34)
 Bread N' You, M. O. Inc. (30)
 Green Air Freight, Ltd. (41)
 Breezy Point Cleaners Inc. (41)
 Bregman Electronics, Inc. (31)
 Bregstein, Arthur O. Associates, Inc. (31)
 Breinat Luncheonette, Inc. (31)
 Breit, Sportswear Corp. (30)
 Brekalek Corporation, The (24)
 Breitab, Realty Corp. (30)
 Bremer Levine & Kliest Advertising, Inc. (01)
 Bren-Mar Luncheonette, Inc. (52)
 Brenda Food Stores, Inc. (31)
 Brener & Lewis, Inc. (31)
 Brentley Plumbing Co., Inc. (31)
 Brennan Transportation Company, Inc. (31)
 Brent Electric Corp. (31)
 Brentwood Sam's Gourmet, Linenium and Tile Corp. (30)
 Breslow, A. and Company, Inc. (31)
 Bressler-Weiser Associates, Inc. (30)
 Brett Associates, Inc. (30)
 Brett Car Corporation, (30)
 Brett-Lane Limited (53)
 Brett Sportswear, Inc. (31)
 Bretzel Barrels, Inc. (30)
 Breton, Paul, Jr., & Sons, Corp. (30)
 Brevo, Inc. (31)
 Brewco Holding Corp. (24)
 Brewers Beverage & Packaging Enterprises, Inc. (31)
 Brews Taxi, Inc. (21)
 Brewster Manufacturing Co., Inc. (30)
 Brewster-Sure Agencies, Inc. (30)
 Brez, Lawrence, Management Corp. (31)
 Bri-Anna Associates, Ltd. (31)
 Brian Hair Stylists, Inc. (30)
 Brian International, Ltd. (30)
 Brian Lloyd Co., Inc. (41)
 Brian Properties Development Corp. (31)
 Brian's, Inc. (31)
 Brian's Handicrafts, Inc. (31)
 Brian Klemers, Inc. (31)
 Briancraft Motors, Inc. (60)
 Briarwick Industries, Inc. (31)
 Brice, Ernest, Inc. (31)
 Briction Realty Corp. (52)
 Bridal Bowler, Inc. The (52)
 Bridal Council, Inc. The (31)
 Bridie's World, Inc. (31)
 Bridestown-Caterers International, Inc. (41)
 Bridge Aid Corp. (50)
 Bridge Press Plant, Inc. (30)
 Bridge and Second Street Realty Corporation (18)
 Bridges' Beauty Salons, Inc. (03)
 Bridgeport, Inc. Corp. (41)
 Bridgford Corp. (31)
 Bridg Industries, Ltd. (24)
 Briggs Professional Pharmacy, Inc. (60)
 Briggs Proportioners Corp. (24)
 Brigitte Beverage Co., Inc. (03)
 Brill Properties, Inc. (31)
 Brillante Restaurants, Inc. (31)
 Brings Shortenings, Inc. (24)
 Brinkenhoff Bronze Works, Inc. (31)
 Brinkenhoff & Costa Associates, Inc. (31)
 Brione's Catering, Inc. (24)
 Brisbane Foods Limited, Inc. (15)
 Brisbane Marketing & Research Corp. (30)
 Briskus Equipment Corp. (30)
 Briskus Painting, Inc. (21)
 Bristol Caterers, Inc. (28)
 British Operating, Inc. (24)
 British Gifts, Inc. (24)
 British Auto & Motors Parts, Inc. (31)
 British Jet Express Centre, Inc. (31)
 Brito Enterprises, Inc. (31)
 Britton Candles, Ltd. (31)
 Britz, Frank D., Inc. (31)
 Broadbook Realty Corporation (24)
 Bradford Restaurant Corp., Inc. (31)
 Broadhurst Exchange Corp. (31)
 Broadland Music Enterprises, Ltd. (31)
 Broadlawn Funding Corp. (30)
 Broadlyn Restaurant Corp. (30)
 Broadway 80th Street Garage Corp. (31)
 Broadway Orchestra, Inc. (03)
 Broaster Equipment, Inc. (31)
 Brochette, Inc. (31)
 Brockner-Mitchell Organization, Inc. (14)
 Broders, Leon A., Inc. (24)
 Brody Painting Co., Inc. (31)
 Brody's Dress Shop, Inc. (28)
 Broglie, Peter, Inc. (31)
 Broker Reclamation Corporation (52)
 Brom's Furniture Corp. (24)
 Bronson Cosmetics, Inc. (30)
 Bronvi Importing Corp. (31)

4/27/75

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF PUERTO RICO

AMALIA HERBIRA ZORIANG-SANCHEZ,
as personal representative of the
estate of NICOLA HERNANDEZ, Deceased,
APOLINAL REYES YHONSOR, as personal
representative of the estate of DESI-
DERIO REYES, Deceased, MARIA RODRIGUEZ,
as personal representative of the estate
of JOSE JEREMIA, Deceased, PETRONILA
LANTIGUA de FRANCISCO, as personal re-
presentative of the estate of JACINTO
FRANCISCO, Deceased, and ANDRES A.
JOHNSON, as personal representative of
the estate of MOTA JOHNSON, Deceased,

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CIVIL NO. 98-72

Plaintiffs

vs.

FILED & ENTERED

CARIBBEAN CARRIERS LTD. and BORDAS
& CO.,

APR 18 1975

Defendants.

CLERK, U.S. DISTRICT COURT
SAN JUAN, PUERTO RICO

MERCEDES NATIVIDAD CASTRO, as personal
representative of the estate of PEDRO
ANTONIO CASTRO, Deceased, MARCIA BOBA-
DILLA ALMONTE, as personal representa-
tive of the estate of CRISTIAN LUIS BOBA-CIVIL NO. 894-73
DILLA RUIZ, Deceased, ALTAGRIACIA ES-
QUEA JIMENEZ, as personal representative
of the estate of SOCRATES ESQUEA JIME-
NEZ, Deceased, JAIME ADOLFO PHIPPS, as
personal representative of the estate
of JACOBO PHIPPS BARRETT, Deceased,
FERNANDA CASTILLO, as personal repre-
sentative of the estate of PEDRO ANTO-
NIO CASTRO GUERRO, Deceased, JULIAN DE
JESUS ALMANZA, as personal representa-
tive of the estate of SEGUNDO DE JESUS
ALMANZA, Deceased, INOCENCIA VAEZ VIUDA
PEREZ, as personal representative of
the estate of LUIS FREDIZ PEREZ VAEZ,
Deceased, PETRONILLA YSERZA MEDINA
VIUDA DE LOPEZ, as personal representa-
tive of the estate of JOSE ANIDIO
LOPEZ MEDINA, Deceased, CASIRDA REYES
DE MORETAS, as personal representative
of the estate of SALVADOR E. MORETAS
ALIEZ, Deceased, JUANA DE JESU
ALTOGRACIA

Cont...

Exhibit "C"

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MARTINEZ, as personal representative of the estate of AGAPITO SANTANA CASTRO, Deceased, FANNY MERCEDES JARVIS PAULINO DE TEJERA, as personal representative of the estate of JOSE MANUEL TEJERA LOPEZ, Deceased, MARIA MODESTO BOBADILLA, as personal representative of the estate of LUIS BOBADILLA RUIZ, Deceased, MARTIN HERNANDEZ, as personal representative of the estate of JOSE MOSQUERA, Deceased, FRANCIA GARIZAO DE DONADO, as personal representative of the estate of PABLO RAMON DONADO MONTERO, Deceased, ROSA MARISERZA DE LA CRUZ, as personal representative of the estate of BRAUDILIO PEREZ MENDEZ, Deceased, CARMEN REYES, as personal representative of the estate of ANIADA VARGA DE LEON, Deceased, JAIME RODRIGUEZ, as personal representative of the estate of ENEMENCIO RODRIGUEZ, Deceased, CANDELERIA R. DE PORTILLO, as personal representative of the estate of AUGUSTO PORTILLO CARO, Deceased, LORENZA REYES, as personal representative of the estate of MARCO ROLANDO REYES, LORENZA REYES, as personal representative of the estate of CAPTAIN CERZO ESQUEA REYES,

Plaintiffs

vs.

CARIBBEAN CARRIERS LTD., BORDAS DOMINICAN CO.; BORDAS & COMPANY,

Defendants.

OPINION AND ORDER

This is an action brought under the General Maritime Law, by relatives of twenty-five seamen who died as a result of serious injuries received while in the employ of the M/V Caribe (October 1971). Plaintiffs allege that the vessel was registered in Liberia and was owned by Caribbean Carriers,

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Ltd., a corporation also organized in Liberia, which corporation should be held responsible for said deaths. They also allege that Caribbean Carriers, Ltd., operated in Puerto Rico through its agent Bórdas and Company, a Puerto Rican corporation, that the M/V Caribe was used for transportation of freight by water to and from United States ports, and that therefore, this Court has jurisdiction.

Respondents move to dismiss the complaint on the grounds that, insofar as it pleads a cause of action for personal injuries and death under the Jones Act, Title 46, United States Code, Section 638, that Act does not sustain jurisdiction in this action; and insofar as causes of action under the general maritime law are pleaded for personal injuries and resulting death on the grounds of unseaworthiness and defendants' negligence, this Court should, in its discretion, decline jurisdiction.

Affidavits presented by Defendants and not contradicted by plaintiffs indicate that the vessel in question was not the property of either defendant at the time of the casualty, since Caribbean Carriers, Ltd. was the owner of the M/V Caribe only until June 25, 1971, when said vessel was sold to Bórdas Linea Dominicana, a corporation organized and existing under the Laws of the Dominican Republic. They also indicate that the ship was flying the flag of the Dominican Republic and was in transit between Colombia and Santo Domingo with an all Colombian or Dominican crew; that said crew was all hired in Colombia or the Dominican Republic; that the M/V Caribe

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had not been in any United States port for more than one year; that the ship's base of operations was Santo Domingo; that any witnesses or documentary evidence would be in the control of third parties or Bordas Linea Dominicana, and thus outside the jurisdiction of this Court and that each and everyone of the plaintiffs in this action, is a citizen of the Dominican Republic.

The first question herein involved is to determine if within the factual framework of this case there exists the minimum necessary points of contact in order for the Jones Act to apply. Based on the uncontested affidavits, we find that neither the owners of the vessel, nor their agents, nor the ports of call, nor the flag flown, nor the crew, nor the plaintiffs, produces a contact sufficient to confer jurisdiction. In fact, we must point out that it is well settled that there may be no recovery under the Jones Act by a foreign national who signs aboard a foreign ship in a foreign country for a voyage beginning and ending in a foreign port. Atencio S. v. The SS. Ciudad de Bogota, 155 F. Supp. 590 (D.C.S.D.N.Y. 1957); O'Neill v. Cunard White Star, Ltd. 160 F. 2d 446 (2 Cir. 1947); Taylor v. Atlantic Maritime Co., 179 F. 2d 597 (2 Cir. 1950).

In the case Garis v. Compania Maritima San Basilio, 386 F. 2d 155 (CA 2, 1967), a Greek seaman was injured on a Greek flag vessel, the shipowner was a Greek resident and conducted his principal business therein. The Court in declining jurisdiction said:

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"Taking everything into account, there are not enough relevant contacts with the United States to justify retaining jurisdiction of this controversy between aliens which could more conveniently be tried in Greece.!"

In Lauritzen v. Larsen, 345 U.S. 571 (1953), the Supreme Court tells us that in order to apply the Jones Act it is necessary to ascertain and value points of contact between the transaction and the states or governments whose competing laws are involved, weighing the significance of one or more connecting factors between the shipping transaction regulated and the national interest served by the assertion of authority, such as the place of the wrongful act, the laws of the flag, the allegiance or domicile of the claimant, the allegiance of the shipowner, the place of contract between the parties, the inaccessibility of the foreign forum and the law of the forum. Bartholomew v. Universe Tankships, 263 F. 2d 437, further explains that substantial contacts are necessary. In short, application of the Jones Act requires ascertainment of the facts which constitute contacts between the transaction involved in the case and the United States, and then a determination as to whether or not they are substantial. In our opinion, the required substantial contacts do not exist in this case.

On the other hand, considerations such as the availability of witnesses, the place of the occurrence of the accident, the costs involved in the process of obtaining the

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evidence, the authority of the court to compel the parties to disclose the evidence and testimony, serve as the overriding factors to determine which is the most convenient forum.

Thus, in Volkenburg v. Netherland-Amerik. Stoomv. Maats, 221 F. Supp. 925, 336 F. 2d 480 (CA 1, 1964), the First Circuit confirmed the District Court's dismissal of a claim under the Jones Act, the general maritime law and Dutch law. The action involved a Dutch seaman, injured on a Dutch vessel, while in Boston harbor. The voyage commenced and ended in Holland and all witnesses were outside of the United States.

The District Court said:

"The United States District Court is not a convenient forum for the adjudication of those Dutch claims because there are no American parties involved, there is no indication that within the United States there is any witness to the alleged liability, there is no suggestion that there is unavailable to plaintiff in the Netherlands. . . both a forum and a right of action or other remedy, and there is no showing of any inde hardship on plaintiff in requiring that he resort to a Dutch tribunal which is presumably better fitted than this Court to understand Dutch rules of law and Dutch contracts, and to measure the seaman's actual loss in the context of standards prevailing in his own society."

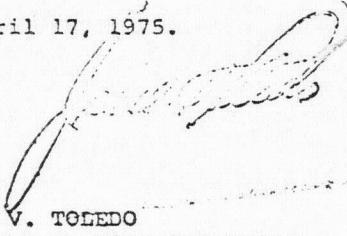
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There are legal remedies in both the Republic of Colombia and the Dominican Republic available to plaintiffs. Any witnesses or documentary evidence relevant to this case should be either in one of the two countries, and their courts would be in a better position than this Court to compel the parties to produce a disclosure of the available documentary or testimonial evidence. This Court will therefore not take jurisdiction in this controversy between aliens to apply foreign law since clearly no substantial contacts qualify it as one over which we should exercise jurisdiction. Accordingly, the Court grants defendants' motion to dismiss and hereby dismisses the action with prejudice.

IT IS SO ORDERED.

San Juan, Puerto Rico, April 17, 1975.


JOSE V. TOLEDO
Chief U.S. District Judge

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United States District Court
FOR THE
DISTRICT OF PUERTO RICO

CIVIL ACTION FILE NO. 87-72

AMALLA HERBIRA ZORIANO SANCHEZ as
 personal representative of the estate of NICOLA
 HERNANDEZ, Deceased, APOLINAL REYES
 YHONSOR as personal representative of the estate
 of DESIDERIO REYES, Deceased, MARIA
 RODRIGUEZ as personal representative of the estate
 of JOSE JEREMIA, Deceased, PETRONILA
 LANTIGUA de FRANCISCO as personal representative
 of JACINTO FRANCISCO, Deceased and ANDRES A.
 JOHNSON as personal representative of the estate
 of MOTA JOHNSON, Deceased

Plaintiff's

v.

CARIBBEAN CARRIERS LTD. and
 BORDAS & CO.,

Defendant

SEAMAN'S ACTION

SUMMONS

PLAINTIFFS DEMAND
 A TRIAL BY JURY

To the above named Defendant :

You are hereby summoned and required to serve upon **THOMAS M. BREEN**plaintiff's attorney , whose address **160 Broadway, New York, N. Y. 10038**

an answer to the complaint which is herewith served upon you, within **20** days after service of this
 summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be
 taken against you for the relief demanded in the complaint.

Clerk of Court

33d Caribbean Bldg., San Juan

Deputy Clerk.

Date: *January 21, 1972*

[Seal of Court]

SEALNOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of **TRUE COPY**.**JOSE A. LOPEZ**
U. S. Marshal

Deputy

FEDERAL OFFICE OF THE

Exhibit "D"

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UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

AMALIA HERBIRA ZORLANO SANCHEZ :
as personal representative of the estate :
of NICOLA HERNANDEZ, Deceased, :
APOLINAL REYES YHONSOR as personal :
representative of the estate of DESIDERIO :
REYES, Deceased, MARIA RODRIGUEZ :
as personal representative of the estate of :
JOSÉ JEREMIA, Deceased, PETRONILA :
LANTIGUA de FRANCISCO as personal :
representative of the estate of JACINTO :
FRANCISCO, Deceased and ANDRES A. :
JOHNSON as personal representative of :
the estate of MOTA JOHNSON, Deceased, :
: SEAMAN'S ACTION
: COMPLAINT
: PLAINTIFFS
DEMAND A
: TRIAL BY JURY
: -----
Plaintiffs, : Cau 87-72
-against- :
: -----
CARIBBEAN CARRIERS LTD. and :
BORDAS & CO., :
Defendants. : (Filed Jan 21, 1972)

ACTION UNDER SPECIAL RULE FOR SEAMEN TO SUE WITHOUT
SECURITY AND PREPAYMENT OF FEES FOR ENFORCEMENT OF
LAWS OF THE UNITED STATES FOR THE PROTECTION OF
HEALTH AND SAFETY AT SEA.

The plaintiffs, by THOMAS M. BREEN, their attorney,
complaining of the defendants, allege upon information and belief:

FIRST: That at all the times hereinafter mentioned, the
above named defendant CARIBBEAN CARRIERS LTD. was and now
is a foreign corporation with an office for the regular transaction of
business within the City of San Juan, Commonwealth of Puerto Rico,
and at all said times was and is doing business in said city and
commonwealth.

SECOND: That at all the times hereinafter mentioned, the
above named defendant BORDAS & CO. was and now is a domestic
corporation with an office for the regular transaction of business
within the City of San Juan, Commonwealth of Puerto Rico, and at
all said times was and is doing business in said city and common-
wealth.

THIRD: That the decedent NICOLA HERNANDEZ died
intestate on a voyage of the M/V CARIBE about October of 1971

Exhibit "D"

FOURTH: That the decedent DESIDERIO REYES died intestate on a voyage of the M/V CARIBE about October of 1971.

FIFTH: That the decedent JOSE JEREMIA died intestate on a voyage of the M/V CARIBE about October of 1971.

FIFTH A: That the decedent JACINTO FRANCISCO died intestate on a voyage of the M/V CARIBE about October of 1971.

FIFTH B: That the decedent MOTA JOHNSON died intestate on a voyage of the M/V CARIBE about October of 1971.

SIXTH: That prior to his death the decedent NICOLA HERNANDEZ was in good health, in possession of his faculties, capable of working and actually did perform his duties as a seaman.

SEVENTH: That prior to his death the decedent DESIDERIO REYES was in good health, in possession of his faculties, capable of working and actually did perform his duties as a seaman.

EIGHTH: That prior to his death the decedent JOSE JEREMIA was in good health, in possession of his faculties, capable of working and actually did perform his duties as a seaman.

EIGHTH A: That prior to his death the decedent JACINTO FRANCISCO was in good health, in possession of his faculties, capable of working and actually did perform his duties as a seaman.

EIGHTH B: That prior to his death the decedent MOTA JOHNSON was in good health, in possession of his faculties, capable of working and actually did perform his duties as a seaman.

NINTH: That at all the times hereinafter mentioned the defendant CARIBBEAN CARRIERS LTD. was and is doing business in the City of San Juan, Commonwealth of Puerto Rico through the defendant BORDAS & CO., a duly authorized agent.

TENTH: That at all the times hereinafter mentioned the defendant CARIBBEAN CARRIERS LTD. owned the M/V CARIBE.

ELEVENTH: That at all the times hereinafter mentioned, the defendant BORDAS & CO. owned the M/V CARIBE.

TWELFTH: That at all the times hereinafter mentioned the defendant CARIBBEAN CARRIERS LTD. operated, managed, controlled, provisioned and supplied the M/V CARIBE.

THIRTEENTH: That at all the times hereinafter mentioned, the defendant BORDAS & CO. operated, managed, controlled, provisioned and supplied the M/V CARIBE.

FOURTEENTH: That at all the times hereinafter mentioned the defendant CARIBBEAN CARRIERS LTD. used the M/V CARIBE for transportation of freight for hire by water to and from United States ports.

FIFTEENTH: That at all the times hereinafter mentioned the defendant BORDAS & CO. used the M/V CARIBE for transportation of freight for hire by water to and from United States ports.

SIXTEENTH: That at all the times hereinafter mentioned, the decedent NICOLA HERNANDEZ was in the employ of the defendant CARIBBEAN CARRIERS LTD. on board the M/V CARIBE, as a Seaman.

SEVENTEENTH: That at all the times hereinafter mentioned the decedent DESIDERIO REYES was in the employ of the defendant CARIBBEAN CARRIERS LTD. on board the M/V CARIBE, as a Seaman.

EIGHTEENTH: That at all the times hereinafter mentioned the decedent JOSE JEREMIA was in the employ of the defendant CARIBBEAN CARRIERS LTD. on board the M/V CARIBE, as a Seaman.

EIGHTEENTH A: That at all the times hereinafter mentioned the decedent JACINTO FRANCISCO was in the employ of the defendant CARIBBEAN CARRIERS LTD. on board the M/V CARIBE, as a Seaman.

EIGHTEENTH B: That at all the times hereinafter mentioned the decedent MOTA JOHNSON was in the employ of the defendant CARIBBEAN CARRIERS LTD. on board the M/V CARIBE, as a Seaman.

NINETEENTH: That at all the times hereinafter mentioned, the decedent NICOLA HERNANDEZ was in the employ of the defendant BORDAS & CO. on board the M/V CARIBE, as a Seaman.

TWENTIETH: That at all the times hereinafter mentioned, the decedent DESIDERIO REYES was in the employ of the defendant BORDAS & CO. on board the M/V CARIBE, as a Seaman.

TWENTY-FIRST: That at all the times hereinafter mentioned the decedent JOSE JEREMIA was in the employ of the defendant BORDAS & CO. on board the M/V CARIBE, as a Seaman.

TWENTY-FIRST A: That at all the times hereinafter mentioned the decedent JACINTO FRANCISCO was in the employ of the defendant BORDAS & CO. on board the M/V CARIBE, as a Seaman.

TWENTY-FIRST B: That at all the times hereinafter mentioned the decedent MOTA JOHNSON was in the employ of the defendant BORDAS & CO. on board the M/V CARIBE, as a Seaman.

TWENTY-SECOND: That about October of 1971 the said five decedents were caused to sustain serious and painful personal injuries while in the employ of the said defendants on board the M/V CARIBE.

TWENTY-THIRD: That the said injuries were not caused through any fault or want of care on the part of the said decedents but wholly and solely by reason of the dangerous, defective and unseaworthy condition of the vessel and its appliances and the negligence of the defendants, their agents and employees.

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TWENTY-FOURTH: That by reason of said injuries, the said decedents were disabled, underwent conscious pain and suffering and mental anguish, were prevented from attending to their work, lost sums of money which they otherwise would have earned, and were permanently injured during their lifetime, all to their damage, the damage of their estates, dependents and next of kin.

TWENTY-FIFTH: That at all the times hereinafter mentioned the M/V CARIBE was an American Merchant vessel.

TWENTY-SIXTH: That beginning in 1971 the said decedents and the defendants entered into an employment contract whereby the decedents were to serve as seamen aboard vessels of the defendants for regular monthly wages and found.

TWENTY-SEVENTH: That at the time the decedents were injured and for a long period of time before the date of said decedents' injuries, the M/V CARIBE made frequent trips to and from American ports and had frequent contacts with American ports.

TWENTY-EIGHTH: That for a long time before said decedents were injured the defendant CARIBBEAN CARRIERS LTD. used the M/V CARIBE as part of a systematic operation and continuous service in its business so that the vessel made frequent trips to and from American ports and had frequent contacts with American ports.

TWENTY-NINTH: That for a long time before said decedents were injured the defendant BORDAS & CO. used the M/V CARIBE as part of a systematic operation and continuous service in its business so that the vessel made frequent trips to and from American ports and had frequent contacts with American ports.

THIRTIETH: That the principal contacts of the vessel and the corporations owning and operating the vessel are with the Commonwealth of Puerto Rico, Territories and Possessions of the United States and States of the United States.

THIRTY-FIRST: That the most appropriate forum for this action is in the courts of the United States of America.

THIRTY-SECOND: That the earnings of the decedents were paid to them by the defendants in American dollars.

THIRTY-THIRD: That the majority of the corporate stock of the defendant CARIBBEAN CARRIERS LTD. is owned, directly or indirectly, by citizens and residents of the United States.

THIRTY-FOURTH: That the majority of the corporate stock of the defendant BORDAS & CO. is owned, directly or indirectly, by citizens and residents of the United States.

THIRTY-FIFTH: That the defendant CARIBBEAN CARRIERS LTD. was entirely operated and controlled by citizens of the United States of America.

THIRTY-SIXTH: That the defendant BORDAS & CO. was entirely operated and controlled by citizens of the United States of America.

THIRTY-SEVENTH: That the defendant CARIBBEAN CARRIERS LTD. has no bona fide operating office in Liberia.

THIRTY-EIGHTH: That the defendant BORDAS & CO. has no bona fide operating office in Liberia.

THIRTY-NINTH: That while the decedents were in the employ of the defendants aboard the vessel M/V CARIBE, the ship never called at a Liberian port.

FORTIETH: That the Liberian flag of the M/V CARIBE is illusory.

FORTY-FIRST: That the M/V CARIBE has never had any trade with the country of Liberia.

FORTY-SECOND: That citizens of the United States formed a foreign corporation and placed the M/V CARIBE under a Liberian flag.

FORTY-THIRD: That at the time of his injuries the decedent NICOLA HERNANDEZ was in the employ of the defendant CARIBBEAN CARRIERS LTD. in the capacity of a Seaman.

FORTY-FOURTH: That at the time of his injuries the decedent DESIDERIO REYES was in the employ of the defendant CARIBBEAN CARRIERS LTD. in the capacity of a Seaman, aboard the M/V CARIBE.

FORTY-FIFTH: That at the time of his injuries the decedent JOSE JEREMIA was in the employ of the defendant CARIBBEAN CARRIERS LTD. in the capacity of a Seaman, aboard the M/V CARIBE.

FORTY-FIFTH A: That at the time of his injuries the decedent JACINTO FRANCISCO was in the employ of the defendant CARIBBEAN CARRIERS LTD. in the capacity of a Seaman, aboard the M/V CARIBE.

FORTY-FIFTH B: That at the time of his injuries the decedent MOTA JOHNSON was in the employ of the defendant CARIBBEAN CARRIERS LTD. in the capacity of a Seaman, on board the M/V CARIBE.

FORTY-SIXTH: That at the time of his injuries the decedent NICCLA HERNANDEZ was in the employ of the defendant BORDAS & CO. on board the M/V CARIBE in the capacity of a Seaman.

FORTY-SEVENTH: That at the time of his injuries the decedent DESIDERIO REYES was in the employ of the defendant BORDAS & CO. on board the M/V CARIBE in the capacity of a Seaman.

FORTY-EIGHTH: That at the time of his injuries the decedent JOSE JEREMIA was in the employ of the defendant BORDAS & CO. on board the M/V CARIBE, in the capacity of a Seaman.

FORTY-EIGHTH A: That at the time of his injuries the decedent JACINTO FRANCISCO was in the employ of the defendant BORDAS & CO. on board the M/V CARIBE, in the capacity of a Seaman.

FORTY-EIGHTH B: That at the time of his injuries the decedent MOTA JOHNSON was in the employ of the defendant BORDAS & CO. on board the M/V CARIBE, in the capacity of a Seaman.

FORTY-NINTH: That the operation, maintenance and routing of the M/V CARIBE were controlled and directed by American citizens in the Commonwealth of Puerto Rico.

FIFTIETH: That the activities of the M/V CARIBE were entirely directed and controlled by the defendant CARIBBEAN CARRIERS LTD. in the United States of America and American citizens in the Commonwealth of Puerto Rico.

FIFTY-FIRST: That the activities of the M/V CARIBE were entirely directed and controlled by the defendant BORDAS & CO. in the United States of America and American citizens in the Commonwealth of Puerto Rico.

FIFTY-SECOND: That the said decedents were seamen and this action is brought to recover damages for personal injuries under a Federal Statute, to wit, Section 33 of the Merchant Seamen's Act of June 5, 1920, amending Section 20 of the Seamen's Act of March 4th, 1915 and jurisdiction herein is claimed by virtue of said statute.

FIFTY-THIRD: That the negligence of the defendants and the unseaworthiness of the vessel M/V CARIBE consist of the following items:

1. Permitting leaks in the ship in the vicinity of the number 3 hatch.
2. Failure to stow cargo properly on the ship.
3. Failure to complete and thoroughly inspect the repairs to the vessel at the previous dry-docking.
4. Permitting the vessel to sail with a list.
5. Failing to rectify said listing of the ship after due notice was given.
6. Failure to have shift boards or other material to prevent shifting of cargo.
7. Not taking into account stress factors and a proper metacentric height of the ship in the weather that could be expected on its final voyage.

3. Permitting defective radio communications to exist aboard the vessel.
9. Not following proper ballast procedures aboard the ship.
10. Failure to take into proper account supplies of water and bunkers so that the vessel could be properly loaded and trimmed.
11. Not having a complete and thorough dry-docking so that repairs on a deficiency list could be completed.
12. Use of the vessel for carrying bulk cargo when the vessel was not designed for such transportation.
13. Improper life saving equipment.
14. Failure to call for rescue in due time so that the vessel and crew could be saved.
15. The captain and the officers of the vessel as well as the officers of the defendants had knowledge and privity of the unseaworthiness and defective conditions of the vessel.
16. Improper maintenance and inspection of the vessel before its final voyage.
17. Failure to provide a safe place for the decedents to work.
18. Failure to provide sufficient and adequate personnel to operate the ship.

FIFTY-FOURTH: That at all the times hereinafter mentioned the defendant CARIBBEAN CARRIERS LTD. was and now is acting as an agent for an undisclosed principal.

FIFTY-FIFTH: That at all the times hereinafter mentioned the defendant BCRDAS & CO. was and now is acting as an agent for an undisclosed principal.

FIFTY-FIFTH A: That the activities of the M/V CARIBE were directed and controlled by the defendants from American ports and the Commonwealth of Puerto Rico.

FIFTY-FIFTH B: That the operation, management and routing of the M/V CARIBE were directed and controlled by American citizens in the Commonwealth of Puerto Rico.

PLAINTIFFS, FOR A SECOND CAUSE OF ACTION REPEAT AND REALLEG
PARAGRAPHS FIRST THROUGH FIFTY-FIRST, BOTH INCLUSIVE, AND FIFTY-THIRD THROUGH FIFTY-FIFTH B, BOTH INCLUSIVE, AND IN ADDITION THERETO ALLEGE UPON INFORMATION AND BELIEF:

FIFTY-SIXTH: That said injuries were not caused by any fault or want of care on the part of the decedents, but wholly and solely by reason of the unseaworthiness of the said M/V CARINE.

FIFTY-SEVENTH: That by reason of said injuries, the decedents were disabled, underwent conscious pain and suffering and mental anguish, were prevented from attending to their work, lost sums of money which they otherwise would have earned, and were permanently injured during their lifetime, all to their damage, the damage of their estates, dependents and next-of-kin.

FIFTY-EIGHTH: That jurisdiction in this cause of action is based upon the General Maritime Law.

PLAINTIFFS, FOR A THIRD CAUSE OF ACTION REPEAT AND REALLEG EACH AND EVERY ALLEGATION HEREINBEFORE SET FORTH IN PARAGRAPHS FIRST THROUGH FIFTY-FIRST, BOTH INCLUSIVE, AND FIFTY-THIRD THROUGH FIFTY-SEVENTH, BOTH INCLUSIVE, AND IN ADDITION THERETO ALLEGE UPON INFORMATION AND BELIEF:

FIFTY-NINTH: That the decedents were seamen, and this action was brought to recover damages for death, under a Federal Statute, to wit, Section 33 of the Merchant Seamen's Act of June 5, 1920, amending Section 20 of the Seamen's Act of March 4, 1915, and jurisdiction herein is claimed by virtue of said statute.

SIXTIETH: That about October of 1971 the said five decedents were caused to sustain serious and painful personal injuries while in the employ of the said defendants on board the M/V CARIBE.

SIXTY-FIRST: That as a result of sustaining said injuries the decedents died leaving surviving dependents and next-of-kin.

SIXTY-SECOND: That said deaths were not caused by any fault or want of care on the part of the decedents, but wholly and solely by reason of the dangerous, defective and unseaworthy condition of said vessel, its appliances and the negligence of the defendants, their agents and employees.

SIXTY-THIRD: That by reason of said deaths, damages and pecuniary loss were sustained by their estates, dependents and next-of-kin.

PLAINTIFFS, FOR A FOURTH CAUSE OF ACTION REPEAT AND REALLEGE EACH AND EVERY ALLEGATION HEREINBEFORE SET FORTH IN PARAGRAPHS FIRST THROUGH FIFTY-FIRST, BOTH INCLUSIVE, FIFTY-THIRD THROUGH FIFTY-SEVENTH, BOTH INCLUSIVE AND SIXTIETH THROUGH SIXTY-THIRD, BOTH INCLUSIVE, AND IN ADDITION THERETO ALLEGE UPON INFORMATION AND BELIEF:

SIXTY-FOURTH: That jurisdiction in this cause of action is based upon the General Maritime Law.

SIXTY-FIFTH: That about October 1 of 1971 the said five decedents were caused to sustain serious and painful personal injuries while in the employ of the said defendants on board the M/V CARIBE.

SIXTY-SIXTH: That as a result of the decedents' sustaining said injuries, the unseaworthiness of the personnel aboard the ship in that they did not measure up to the ordinary standards of the calling, and the unseaworthiness of the vessel, the decedents died leaving surviving dependents and next-of-kin.

SIXTY-SEVENTH: That said deaths were not caused by any fault or want of care on the part of the decedents, but wholly and solely by reason of the unseaworthiness of the said M/V CARIBE.

SIXTY-EIGHTH: That by reason of said deaths, damages and pecuniary loss were sustained by their estates, dependents and next-of-kin.

PLAINTIFFS, FOR A FIFTH CAUSE OF ACTION, REPEAT AND REALLEG EACH AND EVERY ALLEGATION HEREINBEFORE SET FORTH IN PARAGRAPHS FIRST THROUGH FIFTY-FIRST, BOTH INCLUSIVE, FIFTY THIRD THROUGH FIFTY-FIFTH E, AND IN ADDITION THERETO ALLEGE UPON INFORMATION AND BELIEF:

SEKTY-NINTH: That at all the times hereinafter mentioned, the vessel flew the flag of Liberia.

SEVENTIETH: Plaintiffs also rely upon the laws of Liberia and respectfully call the attention of this Honorable Court to the provisions of said laws, including those set forth in this complaint.

SEVENTY-FIRST: Upon information and belief, the Liberian Code of Laws of 1965 was adopted by the Registry of the Republic of Liberia on March 22, 1965; and was prepared for the Republic of Liberia by the Codification Project, Cornell University, under the direction of Milton R. Konvitz; and said Liberian Code is set forth and contained in three (3) volumes published by Cornell University Press 1957.

SEVENTY-SECOND: The Liberian Code of Laws which is designated as "Maritime Laws", contains and includes the following provisions:

"Insofar as it does not conflict with any other provisions of this Title, the non-statutory general Maritime Law of the United States of America is hereby declared to be and is hereby adopted as the general Maritime Law of the Republic of Liberia."

"All causes of action arising out of or under this Act are hereby declared and shall be cognizable before the Circuit Courts of the Republic, sitting in Admiralty, but, except as otherwise specifically provided in this Act, the provisions of this Title shall not be deemed to deprive other Courts of Liberia or elsewhere, with jurisdiction to enforce such causes of action."

"Nothing in these rules shall exonerate any vessel, or the owner, master, or crew thereof, from the consequences of any neglect to carry lights or signals, to keep a proper look-out, or to take any precautions which shall be required either by the ordinary practice of seamen or by the special circumstances of the case."

SEVENTY-THIRD: Upon information and belief, that part of the Liberian Code of Laws which is designated as the "Injuries Law" of Liberia contains and includes the following provisions:

"A tort or injury is an unlawful damage. Every act prejudicial to the interests of another is an injury unless it is warranted by law."

"An act may constitute an injury even though the actor did not intend to injure the person affected. An injury may be committed due to negligence, carelessness, or unskillfulness rather than any injurious design on the part of the injurer."

"All persons, including married women, infants, and incompetents, are capable of committing injuries."

"Every person is liable for all injuries committed by him, subject to the exceptions stated in this section."

"Every employer or principal is liable for the injuries committed by his agents or servants while employed in his business."

"The object of a civil action for injuries is to indemnify the injured person, not to punish the injurer; therefore, it follows that the measure of damage is the actual amount of the loss or inconvenience sustained by the injured person without any reference to the degree of misconduct of which the injurer may have been guilty."

SEVENTY-FOURTH: Upon information and belief, an injured seaman has a cause of action for "unseaworthiness" as that term and doctrine are defined and applied by the "non-statutory general Maritime Law of the United States of America", pursuant to the Liberian Code, Title 22, Chapter 1, Section 30, and by any other provisions which may be applicable.

PLAINTIFFS, FOR A SIXTH CAUSE OF ACTION REPEAT AND REALLEGCE EACH AND EVERY ALLEGATION HEREINBEFORE SET FORTH IN PARAGRAPHS FIRST THROUGH FIFTY-FIRST, BOTH INCLUSIVE, FIFTY-THIRD THROUGH FIFTY-SEVENTH, BOTH INCLUSIVE, SIXTIETH THROUGH SIXTY-THIRD, BOTH INCLUSIVE AND SIXTY-FIFTH THROUGH SEVENTY-FOURTH, BOTH INCLUSIVE, AND IN ADDITION THERETO ALLEGES UPON INFORMATION AND BELIEF:

SEVENTY-FIFTH: Section 337 of the Liberian Maritime Law, contained in Title 22 of the Liberian Code of Laws of 1956 effective March 1st, 1958 as amended April 23rd, 1964 and effective August 18th, 1964 provides as follows:

"Wrongful Death. -Notwithstanding anything contained in Title XVII, whenever the death of a seaman, resulting from an injury, shall be caused by wrongful act, omission, neglect or default occurring on board a vessel, the personal representative of the deceased seaman may maintain a suit for damages, for the exclusive benefit of the deceased's wife, husband, parent, child or dependent relative, against the vessel, person or corporation which would have been liable if death had not ensued. (Eff. Aug. 18, 1964).

PLAINTIFF, FOR A SEVENTH CAUSE OF ACTION REPEATS AND REALLEGES EACH AND EVERY ALLEGATION HEREINBEFORE SET FORTH IN PARAGRAPHS FIRST THROUGH FIFTY-FIRST, BOTH INCLUSIVE, FIFTY-THIRD THROUGH FIFTY-SEVENTH, BOTH INCLUSIVE, SIXTIETH THROUGH SIXTY-THIRD, BOTH INCLUSIVE AND SIXTY-FIFTH THROUGH SIXTY-EIGHTH, BOTH INCLUSIVE AND IN ADDITION THERETO ALLEGES UPON INFORMATION AND BELIEF:

SEVENTY-SIXTH: That the decedents were seamen and their deaths occurred on the high seas beyond a marine league from the shore of any state or dependency of the United States.

SEVENTY-SEVENTH: This cause of action is brought under the provisions of the Death on the High Seas Act 46 USCA 761 Et.

Seq.:

"Right of action; where and by whom brought

"Whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore of any State, or the District of Columbia, or the Territories or Dependencies of the United States, the personal representative of the decedent may maintain a suit for damages in the district courts of the United States, in admiralty, for the exclusive benefit of the decedent's wife, husband, parent, child or dependent relative against the vessel, person, or corporation which would have been liable if death had not ensued, Mar. 30, 1920, c 111, Section 1, 41 Stat. 547."

SEVENTY-EIGHTH: That by reason of the allegations in the seven causes of action in this complaint, plaintiffs have been damaged in the sum of THREE HUNDRED FIFTY SEVEN THOUSAND (\$357, 000.00) DOLLARS.

WHEREFORE, plaintiffs demand judgment against the defendants in the sum of THREE HUNDRED FIFTY SEVEN THOUSAND (\$357, 000.00) DOLLARS, together with the costs and disbursements of this action.

/s/ THOMAS M. BREEN

THOMAS M. BREEN
Attorney for Plaintiffs
Office & P. O. Address
160 Broadway
New York, N. Y. 10038
Bekman 3-3740

RECEIVED
FBI - BOSTON

Sir: We are sending you a copy of
a copy of a
copy, certified in the office of the Clerk of the House
named John

10

Dear Sir:
Yours,

THOMAS M. BREEN

U.S. Senator

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

PLAINTIFFS FILING CASE
as Plaintiff vs. Plaintiff of
the state of Nicolas Rodriguez,
et al.

Plaintiffs

vs.

CASE NUMBER: CIVIL NO. 72-67

CARIBBEAN CARRIERS, AND BORDAS
CO.

Defendants

SWORN STATEMENT

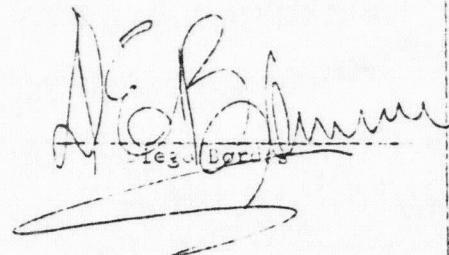
I, Diego Bordas, of legal age, resident of Santo Domingo, Dominican Republic, under oath hereby depose:

- 1) That I am the Chief Executive and sole owner of Bordas Line Dominicana, an entity created pursuant to the Laws of the Dominican Republic, and with offices therein. This Company purchased the MV CARIBE on June 25th 1971 and thereafter operated the said vessel until its disappearance in October, 1971. I am a citizen and resident of the Dominican Republic.
- 2) After we purchased the CARIBE it was registered in the Dominican Republic, with its home port therein.
- 3) From the time we purchased the CARIBE until its disappearance in October, 1971, at no time did it enter within the jurisdiction of the United States, nor did it engage in any type of commerce to or from ports within the jurisdiction of the United States, nor were such voyages even contemplated.
- 4) The CARIBE left Barranquilla, Colombia on October 1, 1971 and was due to arrive in Santo Domingo, Dominican Republic on October 12, 1971. The said voyage did not enter, nor was it scheduled to enter, any port within the jurisdiction of the United States. All of the crew aboard CARIBE were citizens of either the Dominican Republic or of the Republic of Colombia, and were listed either in Santo Domingo or Colombia. The CARIBE carried in place of its regular crew 11 lieutenants from the United States Navy.

Exhibit "E"

5) These documents or witnesses regarding the JV Caliente are either in the Dominican Republic or Colombia.

Given in Santo Domingo, Dominican Republic, this 7th day of June, 1972.

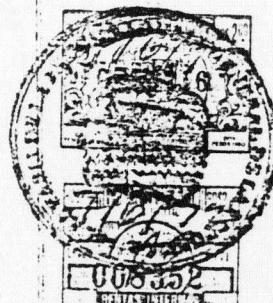

Diego Firdas

AFFIDAVIT NO.

Diego Firdas, of legal age, resident of Santo Domingo, Dominican Republic to me personally known, swears and subscribes before me the above Affidavit, this seven (7) day of June, 1972, in Santo Domingo, Dominican Republic.



Sello R.I.
No. 13589 RD. 0.00
7/7/72



Sellos R.I. 7/72
0758216
008352
\$2.00c/l

REPUBLICA DOMINICANA
PROCURADURIA GENERAL DE LA REPUBLICA
CERTIFICO que la firma que aparece al pie del presente documento es
el de acostumbra a usar en todos sus documentos
y que el sello que aparece en el mismo es de su competencia.
Fiscal de la Republica
Notario Publico
7/7/72

De acuerdo con los registros de este Poder Ejecutivo Nacional,
Santo Domingo, D. M.

Rafael E. Garcia E.
Secretario General

SECRETARIA DE ESTADO DE RELACIONES EXTERIORES
CERTIFICO que la firma que aparece al pie de este documento
es la de Cesar M. Rijo de Soto.
Cesar M. Rijo de Soto
Secretario General
7/7/72

Cesar M. Rijo de Soto

L DOMINICAN REPUBLIC)
N TAL DISTRICT)
C OF SANTO DOMINGO DE GUZMAN))
E TTY OF THE UNITED STATES OF)
A A)
A)

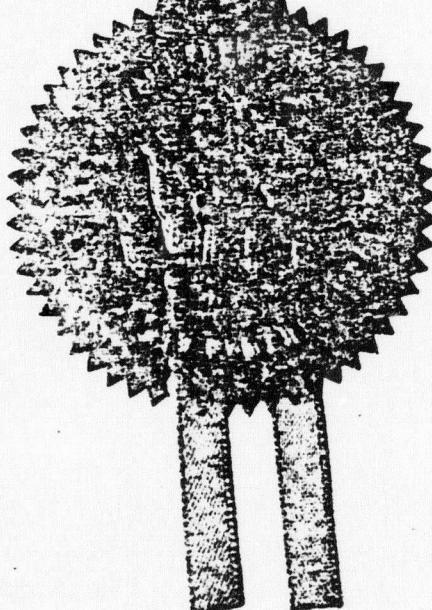
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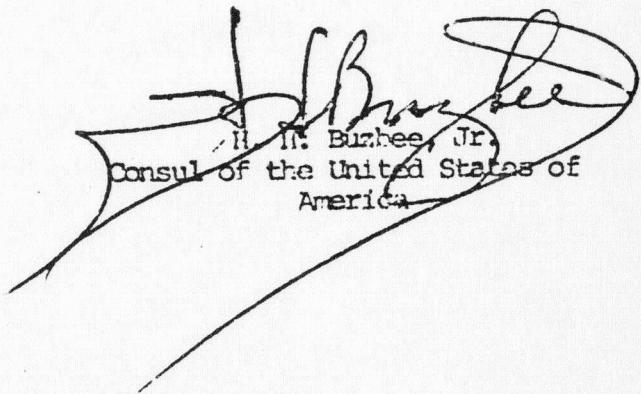
I, H. M. Buzbee, Consul of the United States of America at Santo Domingo,
Dominican Republic, duly commissioned and qualified, do hereby certify
that Caesar M. Rijo De Soto, whose true signature and official seal are,
respectively, subscribed and affixed to the annexed certificate (document),
was on the 7th day of June 19 72, the date thereof, Consul Deputy
in Charge of the Department of Consular Affairs of the Secretariat of State
for Foreign Relations of the Dominican Republic, to whose official acts
faith and credit are due.

For the contents of the annexed document the Embassy assumes no responsibility.

S.

I, H. M. Buzbee, Consul of the United States of America at Santo Domingo, Dominican Republic, this 7th day of June 19 72.




H. M. Buzbee, Jr.
Consul of the United States of America

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X JUDGE DUFFY

AMALIA HERBIRA ZORIANO SANCHEZ, as :
personal representative of the estate :
of NICOLA HERNANDEZ, Deceased, et al., : 75 CIV. 4166

Plaintiffs, : ANSWERING
AFFIDAVIT

-against- : ----- X

CARIBBEAN CARRIERS LIMITED, BORDAS
DOMINICAN CO., BORDAS & COMPANY,
BORDAS CORPORATION,

----- X :
Defendants. :
----- X :
S. DISTRICT CO. FILED
OCT 14 1975
S. D. OF N.Y.

STATE OF NEW YORK } SS:
COUNTY OF NEW YORK }

THOMAS M. BREEN, being duly sworn, deposes and
says:

I am the attorney for the plaintiffs in this action
and I am familiar with the pleadings and proceedings hereto
had herein. Attorney Harry Ezratty of San Juan, Puerto Rico
has represented the plaintiffs in the action in Puerto Rico.
Both of us represent the plaintiffs.

The moving affidavit states that the plaintiffs
should have recourse to Dominican Law or Colombian Law,
without stating what provisions of these laws would afford
a recovery to the survivors of the deceased seamen. Approximate-
ly twenty-eight men are in a watery grave because of the
unseaworthiness of the S.S. CARIBE. The U.S. Coast Guard
report - issued after the search for the sunken vessel had
been abandoned - indicates that the vessel was riding below
her Plimsoll line and that the ship capsized. According to
the investigation of the U.S. Coast Guard, the vessel was
last heard from on October 10th, 1971. The ship has never
been found.

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619

American citizens and residents own the S.S. CARIBE. On July 10, 1974, the deposition of Luis Manuel Bordas was taken in Puerto Rico. On pages 21 and 22 of this deposition, Mr. Bordas stated that there were three directors - Byron King Callen, Diego Bordas and Luis Manuel Bordas - directors of Caribbean Carriers Ltd. Mr. Bordas also stated that the same three men were officers and stockholders of this company. On page 9 of his testimony, Luis Manuel Bordas claimed dual citizenship - American and Dominican. The fact that Luis Manuel Bordas admitted American citizenship and that Mr. Callen was a stockholder, contradicts the statement on page 2 of attorney Callen's affidavit that no stock of Caribbean Carriers Limited was owned by American citizens or residents.

At the time that Caribbean Carriers Ltd. was the owner of the S.S. CARIBE, its address was in care of Bordas and Co., Apartado 4615, Acacia No. 5, Urb., Monterrey, Pueblo, Viejo, San Juan, Puerto Rico, 00902. In page 2 of Mr. Callen's affidavit, he states that the CARIBE was sold on June 25, 1971 to BORDAS LINEA DOMINICANA, and that the vessel was deleted from Liberian Registry at that time. The records of the Bureau of Maritime Affairs of the Republic of Liberia at 103 Park Avenue, New York City indicate that the vessel was stricken from Liberian Registry only on October 22, 1971 - 12 days after the vessel was sunk. Because of the failure to comply with the rules of de-registration under Liberian law, and the failure to comply with International Law, the CARIBE was still subject to Liberian Law and not Dominican Law.

A copy of the official mortgage card of the CARIBE on file at 103 Park Avenue, New York City is attached - exhibit 1.

For further evidence of American ownership and contacts with the United States, the following summaries are made from the mortgages on the vessel - also on file at 103 Park Avenue, New York City:

FIRST PREFERRED SHIP MORTGAGE- Exhibit 2

May 16, 1967

The numbers after the comments refer to the pages of the exhibits.

OWNER: CARIBBEAN CARRIERS LIMITED c/o Bordas Corporation 98 Front Street, New York, New York, MORTGAGEE: THE MASTAN COMPANY, INCORPORATED (Delaware, U.S.A.) 640 Fifth Avenue, New York, New York, initials of Diego E. Bordas (1)

AMERICAN BUREAU OF SHIPPING Classification for vessel(11)

Rights and remedies under laws of Republic of Liberia and the United States (16).

Notice of Sale in New York Newspaper (17)

Owner appoints Bordas Corporation, a New York corporation, whose principal office is at 98 Front Street, New York, New York as its agent for service of process in action by mortgagee. (22)

Appointment of substitute corporation as agent in New York City - signature of Diego E. Bordas (23).

Acknowledgement and affidavit of good faith by Diego E. Bordas in State of New York, County of New York. (24)

SUPPLEMENTAL INDENTURE TO FIRST PREFERRED SHIP MORTGAGE-EX. 3 February 8, 1968

Increase in interest rate to mortgagee by New York commercial banks, interest on mortage to be increased proportionately (2).

Indebtedness in U.S. Currency (3).

Signature of Diego E. Bordas on behalf of Caribbean Carriers Limited (5)

Acknowledgement by Diego E. Bordas in State of New York, County of New York; residence given as Acacia No. 5, Newport, San Juan, Puerto Rico. (6)

Affidavit of Good Faith by Diego E. Bordas (7)

Interest increase in rate chargeable to holder of note by New York commercial banks, proportionate increase to debtor (exhibit B)

SECOND SUPPLEMENTAL INDENTURE TO FIRST PREFERRED SHIP MORTGAGE (EXHIBIT 4) February 27, 1969.

Increase in interest rate chargeable to mortgagee by New York commercial banks, proportionate increase to mortgagor (2)

Signature of Diego E. Bordas on behalf of Caribbean Carriers Limited in New York City (5).

Acknowledgement of execution of instrument in State of New York, County of New York on February 27, 1969 by Diego E. Bordas; address given as Acacia, No. 5, Newport, San Juan, Puerto Rico. (6)

Affidavit of Good Faith by Diego E. Bordas in County of New York, State of New York. (7)

Exhibit "A" note signed by Diego E. Bordas in New York City, payable to holder at 640 Fifth Avenue, New York City.

Exhibit "B" note signed by Diego E. Bordas on February 8, 1968 payable to the Mastan Company, Inc. at 640 Fifth Avenue, New York City.

Exhibit "C" note signed by Diego E. Bordas for Caribbean Carriers Limited payable at 640 Fifth Avenue, New York City.

The provisions of Liberian Law are set out in the Plaintiff's complaint on pages 9 to 13. Paragraph 55 on page 12 quotes from the Geneva Conference on the failure of transfer of registration of a ship - such as occurred here. Paragraph 54 on page 12 sets out the requirements for transfer from Liberian Registry. to a foreign registry. Caribbean Carriers Limited made an ineffective effort to transfer registration from Liberia to the Dominican Republic. Liberia Law controls here, and, because Liberian Law calls for the application of the non-statutory General Maritime Law of the United States, American Law applies in this case.

Luis Manuel Bordas is an admitted American citizen, as well as attorney Byron King Callen. Mr. Bordas says that they were two of the stockholders of Caribbean Carriers. Luis Manuel claims that his brother Diego E. Bordas is a Dominican citizen and the sole stockholder of Bordas Linea Dominicana - to whom Caribbean Carriers tried to transfer the title of the ship. The information from the mortgage records shows that Diego was a resident of San Juan, Puerto Rico - an American resident. The Supreme Court held American Law applicable in a case where the chief stockholder of the ship owning corporation was an American resident and not a citizen - Hellenic Lines Limited v. Rhoditis, 398 U.S. 306 (1970).

No one has had an oral examination of Diego E. Bordas. From my own investigation, I believe that Diego E. Bordas also has dual citizenship - United States and the Dominican Republic.

Your deponent would like to take the testimony of an expert on Liberian Law to show that the allegations made by the plaintiff about the application of Liberian Law are true.

On February 4th, 1954 the Bordas family were the moving force in creating the Bordas Corporation, a New York corporation. On looking through records of that corporation on file in the Office of the County Clerk in New York County, we can see the signatures of Luis M. Bordas and Diego E. Bordas. In subscribing an affidavit in the State of New York, County of New York, Diego E. Bordas gave his address as 64-20 Saunders Street, Forest Hills, Queens County, State of New York. The date of the affidavit is October 7th, 1955. This constitutes more proof that Diego Bordas was a resident of the United States and probably a citizen.

The Bordas family controlled Caribbean Carriers Limited and the Bordas Corporation. The attempted transfer of the Caribe from Liberian Registry to Dominican Registry was a sham transfer because the same people still controlled the vessel.

After receiving notice that the Bordas New York corporation had been dissolved because of failure to pay taxes, the plaintiff served this defendant through the Secretary of State of the State of New York. Service on Caribbean Carriers Limited was made by Registered Mail through the International Trust Company in Monrovia, Liberia. Through the Clerk of this Court, service was made on Bordas Dominican Co. - also known as Bordas Linea Dominicana under Rule 4 (i) (1) (D). Service is also being effected in Puerto Rico on Bordas & Company.

After the service of this Summons and Complaint, your deponent learned that an appeal has been permitted from the order of Judge Toledo dated April 17th, 1975 - a copy of this order is attached to the moving papers.

More than thirty days have elapsed from the service of the Notice of Deposition on attorney Byron K. Callan and he should be required to testify.

In the Puerto Rico action, the original Complaint was filed on January 21, 1972; an amended Complaint - adding other plaintiffs - was filed before October 10th, 1973. The defendants have had full notice of this suit and cannot raise the defense of laches because there has been no prejudice to their position.

WHEREFORE, your deponent respectfully requests:

1. The motions of the defendants be dismissed;
2. The defendants be required to serve an answer setting forth the provisions of Dominican and Colombian law that they claim are applicable;
3. The plaintiff be permitted to take the testimony of Byron K. Callan and an expert on Liberian Law;
4. That decision on this motion be withheld until the appeal pending from the Puerto Rico action be decided;
5. That the plaintiff be granted other discovery to show that Liberian and American law apply in this action;
6. Such other and further relief as the justice of this cause may require.

THOMAS M. BREEN

Sworn to before me this
8th day of October, 1975.

George Stock

NOTARY PUBLIC
State of New York
Qualified to practice
Commissioned in New York
Commission expires March 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

X

AMALIA HERBIRA ZORIANO SANCHEZ, as : JUDGE DUFFY
personal representative of the estate :
of NICOLA HERNANDEZ, Deceased, et al., :
Plaintiffs, : 75 CIV. 4166

- against -

CARIBBEAN CARRIERS LIMITED, BORDAS :
DOMINICAN CO., BORDAS & COMPANY, :
BORDAS CORPORATION, :

Defendants. :

X

Below is a list of Exhibits referred to in the Answering
Affidavit of the attorney for the plaintiff in response to
the Motion of the defendants - return date October 14th,
1975.

EXHIBIT 1 - Mortgage Card of the M.V. CARIBE - page 3

EXHIBIT 2 - First Preferred Ship Mortgage, May 16th, 1967 -
page 3

EXHIBIT 3 - Supplemental Indenture to First Preferred Ship
Mortgage, February 3, 1968 page 3

EXHIBIT 4 - Second Supplemental Indenture to First Preferred
Ship Mortgage, February 27, 1969, page 4

689

Name of Vessel: m.s. CARIDE (ex-Arimathian) STRICKEN 10/2/21 Official No. 2393

699

FIRST PREFERRED SHIP MORTGAGE

ON

OIL SCREW CARIEE, (O. N. 2393)

OWNER:

CARIBBEAN CARRIERS LIMITED
c/o Bordas Corporation
98 Front Street
New York, New York

MORTGAGEE:

THE MASTAN COMPANY, INCORPORATED (Delaware, U. S. A.)
640 Fifth Avenue
New York, New York

Joe
Clay
April 16
This FIRST PREFERRED SHIP MORTGAGE made and delivered
and existing under the laws of the Republic of Liberia, (herein
called "Owner") to THE MASTAN COMPANY, INCORPORATED, a corporation
organized and existing under the laws of Delaware, U. S. A. (herein
called "Mortgagee"), WITNESSETH:

WHEREAS,

1. Owner is the sole owner of the whole of the
Liberian Oil Screw Vessel CARIBE, built at
Wilmington, California in 1945, of 3,864
tons gross and 2,156 tons net register,
documented under the laws and flag of the
Republic of Liberia, Home Port Monrovia,
Official Number 2393, (the "Vessel");
2. Owner is justly indebted to Mortgagee in the
sum of One Hundred Nine Thousand (\$109,000.00)
Dollars, lawful money of the United States of
America, and interest, for money loaned by
Mortgagee to Owner pursuant to a Loan Agreement
between Owner and Mortgagee dated *April 16*, 1967,

(said Loan Agreement and all amendments and instruments made and delivered by Owner pursuant thereto, being herein collectively called the "Loan Agreement"), which indebtedness is payable to the order of Mortgagee as follows:

Twenty-four (24) consecutive monthly installments, the first of which, due and payable one month after date, is in the amount of Four Thousand Five Hundred Forty-One Dollars and Eighty-Two Cents (\$4,541.82), and twenty-three (23) of which are each in the amount of Four Thousand Five Hundred Forty-One Dollars and Sixty-Six Cents (\$4,541.66), with interest of six (6%) per cent per annum on unpaid principal balances computed on the basis of a 360 day year, and an additional charge, payable on demand, computed at the rate of two (2%) per cent per month on the principal sum or any part thereof which may be in default, such additional charge to be payable after as well as before maturity,

as evidenced by Owner's Promissory Note in the form of Exhibit "A" annexed hereto (called the "Note"); and

3. The Owner, to secure the prompt payment of its said debt, the interest thereon, the Note evidencing same, and the prompt and faithful performance, observance of and compliance with all covenants, terms and conditions contained in this Mortgage, the Note, and the Loan Agreement, duly makes and delivers this FIRST PREFERRED SHIP MORTGAGE;

NOW, THEREFORE, in consideration of the premises, and of the money loaned by Mortgagee to Owner and of other good and valuable considerations, the receipt whereof Owner hereby acknowledges, and to secure the payment of Owner's debt to the Mortgagee and interest thereon, and the Note, and the payment of all such other sums as may hereafter become secured by this Mortgage in

accordance with its terms, and to secure the timely performance and observance of and compliance with each and all of Owner's warranties, agreements, covenants and promises contained in this Mortgage, the Note and the Loan Agroomont, the Owner has granted a security interest in and has bargained, sold, conveyed, pledged, assigned, transferred, mortgaged, confirmed and set over, and does by these presents grant a security interest in, bargain, sell, convey, pledge, assign, transfer, mortgage, confirm and set over unto the Mortgagor, its successors and assigns, the WHOLE of the Vessel, together with all of the engines, machinery, rigging, boats, anchors, chains, tackle, apparel, furniture, fittings, spare parts, and equipment thereunto appertaining and belonging, now owned or hereafter acquired, on board or ashore, and all additions, improvements and replacements hereafter made in or to the Vessel or any part thereof;

TO HAVE AND TO HOLD the same unto the Mortgagor,
its successors and assigns forever;

PROVIDED, ONLY, and the conditions of these presents are such, that if the Owner, its successors or assigns, shall pay or cause to be paid to the Mortgagor the said principal sum of One Hundred Nine Thousand (\$109,000.00) Dollars, and the interest, and the Note evidencing same as and when the same shall be due and payable according to the terms thereof, and all other sums, together with interest, that may become owing and payable to Mortgagor under and by reason of the terms and conditions of this Instrument, or otherwise, and shall perform, observe and comply with all the covenants, terms and conditions, expressed or implied, in this Mortgage, the Note, and the Loan Agreement, to be performed, observed and complied with by or on the part of the Owner, then these presents and the rights hereunder shall cease, determine and be void; otherwise to be and remain in full force and effect.

The Owner, for itself, and for its successors and assigns, hereby covenants, declares and agrees that the Vessel and all the appurtenances thereunto appertaining or belonging and all improvements and replacementments hereafter made in or to the Vessel or any part thereof are to be held subject to the further covenants, conditions, terms and uses hereinafter set forth, as follows:

ARTICLE I

Time being of the essence, the Owner warrants, covenants and agrees:

1. The Owner will pay the Note and the debt, and interest, evidenced thereby, and installments thereof when due, and will punctually observe, perform and comply with each and all of the covenants, terms and conditions herein and in the Note and in the Loan Agreement, expressed or implied, on its part to be observed, performed or complied with.

2. (a) The Owner is a corporation, duly organized and existing and in good standing under the laws of the Republic of Liberia and shall so remain during the life of this Mortgage; it is duly qualified and authorized to Mortgage the Vessel; all corporate action necessary and required by law for the execution and delivery of this Mortgage, the Note, the Loan Agreement and the good faith affidavit filed herewith has been duly and effectively taken; and the Note in the hands of the holder thereof and this Mortgage and the Loan Agreement are and will always be and shall at all times be construed as the valid and enforceable obligations of the Owner in accordance with their respective terms; and

(b) The Owner lawfully owns and is lawfully possessed of the whole of the Vessel free from any lien or encumbrance whatsoever, except the lien of this Mortgage, and warrants and will defend the title and possession thereto and to every part thereof for the benefit of the Mortgagor against the claims and demands of

all persons whomsoever; and that said Vessel is and during the life of this Mortgage shall be kept free of all other encumbrances; and that any and all liens, or liens or claims constituting or which may be made the basis of liens shall be satisfied and discharged within ten (10) days from the inception thereof; and

(c) The Owner shall comply with and satisfy all the provisions and requirements of the laws of the Republic of Liberia, in order to establish and maintain this Mortgage as a First Preferred Ship Mortgage upon the Vessel, its equipment and appurtenances, and upon all additions, renewals, improvements and replacements made in or to the same.

3. (a) The Owner shall, at its expense, at all times this Mortgage and any amount of the debt and the Note secured thereby exist and remain outstanding, insure the Vessel and keep the Vessel insured for amounts of the greater of the full commercial value of the Vessel or \$250,000.00. Such insurance is to be in the name of the Owner with losses payable solely to Mortgagee (except to the extent provided in subparagraph (d) of this Paragraph 3). All original policies, binders, cover notes and renewals or replacements thereof shall be delivered to and held by Mortgagee. The terms of the policies, the insurance companies, the underwriters or underwriting funds shall be at all times satisfactory in form and substance to Mortgagee and its Counsel. Insurance shall be in the broadest and latest form of maritime insurance undertaken by underwriters at Lloyds (London) or the American Institute of Marine Underwriters and shall insure against all marine and other risks and hazards for which insurance is obtainable, including but not limited to loss or damage by fire, perils of the sea, explosion, confiscation, war, riot, vandalism and other disasters, and with customary Inchmaree Clause and Four Fourths Running Down Clause. The policy value in all such insurance shall not exceed the amount insured thereby. So called "Total Loss Interests, Full Interest Admitted

(F.I.A.), Policy Proof of Interest (P.P.I.)" insurance as hull and machinery underwriters will allow may be carried as a part of the insurance required; and

(b) Owner shall obtain and maintain in force such insurance (but in no event less than \$1,000,000.00) as Mortgagor may deem adequate to cover Owner's liability, or that of the Vessel for damages by reason of personal injury, loss of life, losses to cargo, losses to the property of others and similar risks or each of the same and other risks, as covered by the standard form of Protection and Indemnity Insurance. Owner shall also carry such Compensation and other insurance covering any passengers, the officers and crew, Longshoremen, Harbor Workers, claims of shippers, cargo owners and others in such amounts as Owner or Mortgagor considers necessary or as Mortgagor may require to protect the Vessel, the Owner, and the Mortgagor, and each of them from liability to third parties.

(c) All insurance premiums and costs shall be paid by Owner and Mortgagor shall have no liability for premiums or other insurance costs or expense and all policies shall provide for at least ten (10) days prior written notice to be given Mortgagor by underwriters in the event of and prior to cancellation for any reason. If Owner fails to pay a premium when due, Mortgagor may, but shall not be required to, pay the same, in which case any amount so paid shall be added to Owner's debt to Mortgagor and be secured by this Mortgage, and bear interest at the rate payable on default as provided in the Note.

(d) So long as no default exists under the Mortgage, the Note, or Loan Agreement, and if underwriters have not been otherwise instructed in writing by Mortgagor, policies may provide that

(i) Any loss on protection and indemnity risks may be paid to the person to whom liability covered by such insurance has been incurred, or to Owner to reimburse it for any loss, damage or expense

incurred by it and covered by such insurance, provided the underwriters and the Mortgagor receive evidence of discharge of the liability incurred against simultaneously with such payment; and

(ii) Any loss involving \$15,000.00 or less damage to the Vessel or liability (other than that described in (i) above) within such amount may be paid by underwriters direct for the repair, liability or other charges involved, or, if Owner shall have first fully repaired the damage and paid the cost thereof, or discharged the liability, or paid the other charges, underwriters may pay Owner as reimbursement therefor, Provided, however, if such loss or damage in any instance exceeds \$15,000.00 or if Mortgagor gives written notice to underwriters to pay all losses to Mortgagor, underwriters shall make payment solely to Mortgagor.

(e) The Owner shall, at its own expense make all Proofs of Loss and take all steps and do any and all things to expedite and effect prompt payment of losses covered by insurance.

(f) If the Vessel shall become an actual or constructive or compromised constructive total loss, or if any of the events of default hereinafter stated shall occur, all insurance proceeds shall be paid to Mortgagor and applied to the debt then unpaid and owing to Mortgagor. If any insurance proceeds remain after Owner's debt to Mortgagor, interest accrued thereon, and all expenses disbursed or incurred by Mortgagor have been fully paid, reimbursed, satisfied and discharged, such excess proceeds shall be paid to Owner, its successors or assigns. If the proceeds of insurance are insufficient to fully pay all amounts owing to Mortgagor, Owner shall pay the deficiency on demand. A constructive or compromised constructive total loss or an unrepaid damage loss may not be declared or agreed upon without the prior written consent of the Mortgagor.

(g) Owner will not do any act or suffer or permit any act or thing to be done whereby any insurance shall or may be suspended, impaired or defeated, or engage or permit the Vessel to engage in any voyage or business or activity deemed by the underwriters so hazardous as to justify cancellation of insurance or denial of coverage for loss or damage or liability to third parties, or any others whomsoever, and the Owner shall not suffer or permit the Vessel to engage in or undertake any voyage or to carry any cargo not permitted under policies of insurance in effect at the time without first covering the Vessel for the maximum amount herein-provided for by insurance for such voyage or the carriage of such cargo.

(h) Owner shall promptly furnish to Mortgagee a detailed report, signed by Owner's independent marine insurance agents, of all insurance carried and maintained on the Vessel and stating, in effect, that such insurance complies with the applicable requirements of this Mortgage, and will furnish like reports to Mortgagee whenever reasonably requested thereafter. Owner shall obtain and deliver to Mortgagee written agreements of such agents, and any successor agents, to promptly and from time to time advise Mortgagee of any default in payment of any premium (whether for new insurance or insurance replacing, renewing or extending existing insurance) and of any act or omission by Owner which might invalidate or render unenforceable any insurance on the Vessel, and of extraordinary insurance requested or obtained for the carriage of ammunition, black powder, T N T, and other hazardous cargo, or for voyages excluded from usual and customary coverage. Upon request Owner will obtain and furnish Mortgagee with detailed information as to any such insurance.

4. The Owner shall not cause or permit the Vessel to be operated in any manner contrary to law, shall not abandon the Vessel in any port, shall not negligently or willfully permit

the Vessel to waste, or to be damaged or destroyed, shall not engage in any unlawful trade or violate any law or carry any cargo that will expose the Vessel to penalty, forfeiture or capture, and will not do, or suffer or permit to be done, anything which can or may injuriously affect the registration of the Vessel and this First Preferred Ship Mortgage under the laws and regulations of the Republic of Liberia.

5. The Owner will pay and discharge when due and payable, from time to time, all taxes, assessments, governmental charges, fines and penalties lawfully imposed on the Vessel.

6. Neither the Owner, any charterer, the Master of the Vessel, nor any other person, has or shall have any right, power or authority to create, incur or permit to be placed or imposed or continued upon the Vessel, any liens whatsoever other than for crew's wages or salvage and this Mortgage, and any mortgage, hypothecation, pledge, lien instrument, or evidence of consent to or acquiescence thereto made or delivered in violation of the covenants herein contained shall be void and of no force or effect whatsoever.

7. The Owner will place, and at all times will retain, a certified copy of this Mortgage on board the Vessel to be carried with the Vessel's Ships Papers and will cause such certified copy to be exhibited to any and all persons having business therewith which might give rise to any claim or lien thereon, and to any representative of the Mortgagor; and will place and keep prominently displayed in the pilot house, the chart room and in the Master's cabin of the Vessel a framed printed notice in plain readily readable type as follows:

"NOTICE OF MORTGAGE

" This Vessel is subject to a FIRST PREFERRED
SHIP MORTGAGE in favor of and held by

THE MASTAN COMPANY INCORPORATED,

640 Fifth Avenue,

New York, New York, U. S. A.

"By the terms of such FIRST PREFERRED SHIP MORTGAGE,

and the Laws of the Republic of Liberia, neither the Owner, Charterer, the Master of this Vessel, nor any agent, nor any other person has the right, power or authority to create, incur, impose, promise or permit to be placed upon this Vessel any lien whatsoever other than for crew's wages or salvage."

8. (a) Except for the lien of this Mortgage, the Owner will not create, or suffer to be created or continued, any lien, encumbrance or charge on the Vessel, or on any income therefrom; and in any event, within ten (10) days after any lien, encumbrance or charge becomes due and payable, Owner will pay or cause the same to be discharged or make adequate provision for the payment, satisfaction or discharge of any and all such liens, encumbrances or charges, and cause the Vessel to be released and discharged therefrom; and

(b) If a libel be filed against the Vessel, or if the Vessel be otherwise arrested, attached, levied upon, taken into custody or detained by any proceeding in any court or tribunal or by any Government or other authority, the Owner shall forthwith notify the Mortgagor thereof by full rate cable or telegraph, confirmed by First Class and Air Mail letter, and within ten (10) days shall cause the Vessel to be released and discharged from any such arrest, attachment or detention and will promptly notify the Mortgagor thereof in like manner.

9. The Owner shall at all times, without cost or expense to the Mortgagor, maintain and preserve the Vessel in good running order and repair so that the Vessel shall be, in so far as due diligence can make her so, tight, staunch, strong and well and sufficiently tackled, apparelled, furnished, equipped and in every respect seaworthy and in good operating condition; shall always

keep the Vessel in such condition as will entitle her to the highest classification and rating for Vessels of the same age and type by American Bureau of Shipping, and shall from time to time furnish to the Mortgagor certificates made by such classification society that such classification is maintained, all classification surveys have been completed when due and that any and all recommendations affecting class or condition have been satisfactorily carried out. The Vessel shall, and the Owner covenants that it will at all times comply with all applicable laws, treaties and conventions of the Republic of Liberia and rules and regulations issued thereunder, including, particularly, but without limitation by this enumeration, the International Convention for Safety of Life at Sea, 1929, as Amended by the 1948 and subsequent Conventions; and shall have on board, as and when required thereby, valid certificates showing compliance therewith. The Owner shall not make, or permit to be made, any substantial change in the structure, type or speed of the Vessel, or change in her rigs, without first receiving the written approval of the Mortgagor.

10. The Owner at all times shall afford the Mortgagor or its authorized representatives full and complete access to the Vessel for the purpose of inspecting the same and her cargo, her logs and papers, and at the request of the Mortgagor, the Owner shall deliver for inspection copies of any and all charters, contracts and documents relating to the Vessel whether on board or not, and shall furnish the Mortgagor with full information regarding any casualties or damage to the Vessel or replacements thereon involving an amount in excess of \$15,000.00.

11. The Owner shall not sell, mortgage, or transfer, nor demise charter nor time charter the Vessel for more than twelve months, or voyage charter the Vessel for more than two consecutive voyages, or except, on authorization of the Liberian Government and the

consent of the United States Government, permit the Vessel to carry cargoes to or from the Soviet Union, Latvia, Lithuania, Estonia, Poland, Czechoslovakia, Hungary, Roumania, Bulgaria, Albania, North Korea, the Soviet Zone of Germany, Manchuria, Communist China, Cuba or the Communist controlled areas of Vietnam, without the written consent of the Mortgagor first had and obtained, and any such consent to any one sale, mortgage, transfer or charter shall not be construed to be a waiver of this provision with respect to any subsequent proposed sale, mortgage, transfer or charter. Any such sale, mortgage, transfer or charter of the Vessel shall be subject to the provisions of this Mortgage and the lien it creates.

12. The Owner will reimburse the Mortgagor promptly, for any and all expenditures which the Mortgagor may from time to time elect to make, lay out or expend in providing protection in respect of insurance, discharge of liens, libels, taxes, dues, assessments, governmental charges, fines and penalties, repairs, attorneys' fees and any other matters as the Owner is obligated to provide, but fails to provide, or which a prudent Owner or ship operator would provide. Such obligation of the Owner to reimburse the Mortgagor shall be added to the principal amount of Owner's debt to the Mortgagor and shall be secured by this Mortgage and shall be payable by the Owner on demand with interest at the rate of two (2%) per cent per month. The Mortgagor, though privileged so to do, shall be under no obligation to the Owner, or to anyone, to make any such expenditures, nor shall the making of any thereof relieve the Owner of any default.

13. The Owner agrees, in the event of the seizure or requisition of the title, ownership or use of the Vessel by any government, governmental authority, or any department or agency

thereof, any and all money paid or which might become payable as compensation for the Vessel or for her use, shall be paid over to the Mortgagee for application to Owner's debt to the Mortgagee, and interest thereon, and Owner agrees to execute and deliver all instruments requested by Mortgagee in respect thereof. If any payments so received by Mortgagee are of the nature of charter hire, freight or other compensation for the use of the Vessel pursuant to a voyage or time charter or other contract of af-freightment requiring operation of the Vessel by Owner, Mortgagee shall retain therefrom amounts equal to matured and unpaid installments of the Note and interest and amounts of installments and interest which will become payable in the period or periods of the voyage for which such payment or payments have been received and Mortgagee shall remit any balance to Owner unless Owner is in default of this Mortgage or Mortgagee deems itself in danger of losing the debt owing to it or any part thereof.

14. Owner shall cause the present Master of the Vessel and all Masters who succeed him, to forthwith notify Mortgagee by telephone, telegraph or radio and by First Class and Air Mail letter of any act or contemplated act which might in any manner involve or effect the ownership, registration or documentation of the Vessel, or the status of this Mortgage. From time to time, when so requested by the Mortgagee, Owner shall furnish to Mortgagee the full name and residence address and nationality of the Master of the Vessel.

15. If this Mortgage or the Note or the Loan Agreement or any instrument made by or for Owner pursuant thereto, or any provision thereof or hereof, shall be rendered invalid (or so interpreted by Mortgagee) in whole or in part by reason of any present or future law or any decision of any authoritative court, or if any of the documents or instruments held by Mortgagee be deemed by the Mortgagee for any reason insufficient to carry out

the true intent and spirit of this Mortgage and of any of such documents and instruments, then, from time to time, the Owner will execute, on its own behalf, such other and further assurances, documents and instruments as in the opinion of Mortgagor may be required to more effectually subject the Vessel to the payment in full of the indebtedness, and interest, now and hereafter owing by Owner to Mortgagor, and to the performance of the terms and provisions of such documents, instruments and this Mortgage.

ARTICLE II

16. In case any one or more of the following events (herein called "events of default") shall happen:

- (a) Omission or failure in payment of any installment of principal or interest on the Owner's debt or the Note when and as the same shall become due and payable; or
- (b) Omission or failure in the due and timely observance of, performance and compliance with any of the covenants and agreements contained in Paragraphs 1. to 15. inclusive of ARTICLE I hereof; or
- (c) Omission or failure in the due and timely observance and performance of any of the other promises, covenants, agreements and conditions in this Mortgage, or in the Note, or in the Loan Agreement required to be kept and performed by the Owner; or
- (d) The Owner shall suffer or permit execution, attachment or arrest to be levied against it or the Vessel, or proceedings to be taken against the Vessel preliminary or supplementary to a judgment against it or the Vessel; or
- (e) The Owner shall (i) apply for or consent to the appointment of a Receiver or Trustee of the Vessel or a Receiver, Conservator, Trustee or Liquidator of the Owner or

of all or a substantial part of the assets or business of the Owner, (ii) be unable, or admit its inability to pay its debts as they mature, (iii) make a general assignment for the benefit of creditors, (iv) be adjudicated a bankrupt or insolvent, or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or to take advantage of any insolvency law, or (vi) file an answer admitting the material allegations of a petition filed against the Owner in any bankruptcy, reorganization or insolvency proceeding, or (vii) if action shall be taken by the Owner for the purpose of effecting any of the foregoing, or (viii) enter into an arrangement with its creditors; or

(f) An order, judgment or decree shall be entered by any court of competent jurisdiction approving a petition seeking reorganization of the Owner or appointing a Receiver or Trustee of the Vessel or a Receiver, Trustee or Liquidator of the Owner or of all or a substantial part of the assets of the Owner; or

(g) The Vessel shall be lost, disappear or become a constructive or compromised constructive total loss; or

(h) Any requisition, purchase or taking of the title or ownership or possession of the Vessel by or under color of the authority of any Government or any agency or representative of any Government shall have occurred; or

(i) If the Mortgagor at any time deems itself in danger of losing the indebtedness owing to it by Owner, or any part thereof;

THEN AND IN EACH AND EVERY SUCH INSTANCE the Mortgagor shall have the right to:

(i) Declare the then unpaid indebtedness and the Note evidencing the same due and payable immediately, and upon such declaration, the entire unpaid principal of and interest on the indebtedness and Note shall become and be immediately due and payable;

(ii) Exercise all the rights and remedies in foreclosure and otherwise given to the Mortgagor by the Laws of the Republic of Liberia, the United States of America, or the applicable laws of any other applicable jurisdiction;

(iii) Bring suit at law, in equity or in admiralty, as it may be advised, to recover judgment for any and all amounts due under the Note, or otherwise hereunder, and collect the same out of any and all property of the Owner whether covered by this Mortgage or otherwise;

(iv) Take the Vessel, wherever it may be, with or without legal process and without being responsible for loss or damage; and, the Owner, the Master, Owner's agent or any other person in possession of the Vessel forthwith upon demand of the Mortgagor shall surrender to the Mortgagor possession of the Vessel and the Mortgagor may, without being responsible for loss or damage, hold, lay up, lease, charter, operate, or otherwise use, sell or dispose of the Vessel for such time and upon such terms as it may deem to be for its best advantage, accounting only for the net profits, if any, arising from such use after charging upon all receipts from such use or from the sale of the Vessel by court proceedings or pursuant to Subsection (v)

next following, all costs, charges, damages, losses, and expenses of every kind and character incurred by reason thereof; and if at any time the Mortgagee shall avail itself of the right herein given it to take the Vessel, the Mortgagee shall have the right to dock the Vessel for a reasonable time at any dock, pier or other premises of the Owner without charge, or to dock at any other place at the cost and expense of the Owner;

(v) Without being responsible for loss or damage, Mortgagee may sell the Vessel at any place and at such time as the Mortgagee may specify and in such manner as the Mortgagee may deem advisable, free from any claim by the Owner in admiralty, in equity, at law or by statute, after first giving notice of the time and place of any such sale by publishing such notice for five (5) consecutive days in a daily newspaper of general circulation published in New York, New York; and by publication of a similar notice in a daily newspaper, if any, at the place of sale; and by mailing a similar notice to the Owner on or before the day of first publication. Any such sale or sales may be adjourned by Mortgagee from time to time by announcement at the times and places of sale, and without further notice or publication the Mortgagee may make such sale or sales at the times and places to which sales shall be so adjourned.

17. The Owner further agrees in the event of the institution by the Mortgagee of judicial proceedings to enforce any right under this Mortgage, that the Mortgagee shall be entitled to exercise the right of entry and also any other rights and powers herein conferred and provided to be exercised by the Mortgagee upon

the happening of any event of default and in any such judicial proceedings, the Mortgagee shall be entitled as a matter of right to the appointment of a Receiver of the Vessel and the earnings, income, hire, revenue, rent, issues and profits thereof, with such powers as the Court making such appointment may confer.

18. A sale of the Vessel made in pursuance of this Mortgage, whether under the power of sale hereby granted or in accordance with judicial proceedings, shall operate to divest all right, title and interest of any nature whatsoever of the Owner in or to the Vessel so sold, and shall forever bar the Owner, its successors and assigns, and all persons claiming by, through or under any of them from any right, title or interest in the Vessel and its appurtenances. No purchaser shall be bound to inquire whether due notice has been given, or whether any default has occurred, or as to the propriety of the sale, or as to the application of the proceeds thereof. In case of any such sale of the Vessel, a purchaser who is the holder of the Note shall be entitled, for the purpose of making settlement or payment for the property purchased, to use and apply such Note in order that there may be credited against the amount remaining due and unpaid thereon the sums payable out of the net proceeds of any such sale to the holder of such Note after allowing for the costs and expenses of sale and other charges; and thereupon such purchaser shall be credited on account of such purchase price, with the net proceeds that shall have been so credited upon such Note. At any such sale, the holder of the Note may bid for and purchase the property sold and upon compliance with the terms of sale may hold, retain and dispose of such property without further accountability therefor.

19. In the event of a sale of the Vessel, under any power herein contained, the Owner will, if and when required by Mortgagee, execute such forms of conveyance or transfer of the

ownership of the Vessel as the Mortgagee may request or approve.

20. SAMUEL W. BARACH, or any other person whom the Mortgagee may from time to time select, is hereby irrevocably designated, constituted and appointed Attorney-in-Fact of the Owner (i) to execute and deliver to any purchaser of the Vessel at any sale made pursuant to this Mortgage, in the name of and in behalf of the Owner, a good conveyance and transfer of the title to the Vessel so sold; and (ii) to execute and deliver in the name of the Owner any instruments requested by Mortgagee pursuant to Paragraph 15. hereof; and (iii) to demand, collect, receive, compromise, receipt and sue for all freights, hire, earnings, issues, revenues, income and profits of the Vessel, and amounts due from or payable by underwriters on any insurance thereon as payments of losses or as return premiums or otherwise, and salvage awards and recoveries, and recoveries in general average or otherwise; and all other sums due or to become due the Vessel or the Owner at the time of the happening of any event of default, or in respect of any insurance thereon, in Mortgagee's name or in the name of the Owner, from any person whomsoever, and to make, give and execute in Mortgagee's name or in the name of the Owner, acquittances, receipts, releases or other discharges for the same, whether under seal or otherwise, and to endorse, accept and execute in Mortgagee's name or in the name of the Owner all checks, notes, drafts, warrants, agreements and all other instruments in writing with respect to the foregoing; and (iv) to appear in the name of the Mortgagee or the Owner, in any Court of any state, country or nation in the world where a suit or a libel, attachment or arrest is pending against the Vessel because of or on account of any alleged lien or claim from which the Vessel has not been released, and to take such proceedings and make such disbursements as said Attorney-in-Fact may deem proper towards the defense of such suit and the purchase

or discharge of such lien, or discharge of such libel, attachment or arrest, and Owner agrees that all expenditures so made or so incurred for the purpose of such defense, purchase or discharge shall be a debt due from the Owner, its successors and assigns, to the Mortgagee, and shall be secured by the lien of this Mortgage in like manner and extent as if the amount and description thereof were included herein.

21. The Owner covenants that upon the happening of any of the events of default, then, upon demand of the Mortgagee, the Owner will pay to the Mortgagee the whole amount due and payable on the Note and the debt evidenced thereby for principal and interest, and in case the Owner shall fail to pay the same the Mortgagee shall be entitled to recover judgment for the whole amount so due and unpaid, together with such further amounts as shall be sufficient to cover the reasonable costs and expenses of collection, including reasonable compensation to the Mortgagee's agents, attorneys and counsel and any necessary advances, disbursements, expenses and liabilities made or incurred by it hereunder.

22. Each and every power and remedy herein given to the Mortgagee shall be cumulative and shall be in addition to every other power and remedy herein given or now or hereafter existing at law, in equity, in admiralty or by statute, and each and every power and remedy whether herein given or otherwise existing may be exercised from time to time and as often and in such order as may be deemed expedient by the Mortgagee, and the exercise or the beginning of the exercise of any power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any other power or remedy. No delay or omission by the Mortgagee or by the holder of the Note in the exercise of any power or right or in the pursuance of any remedy accruing upon any default or event of default shall impair any such right, power

or remedy or be construed to be a waiver of any right to take advantage of any future default or of any past default not completely cured thereby.

23. The proceeds of a sale of the Vessel and the net earnings of any charter operation or other use of the Vessel by the Mortgagor under any of the powers herein specified and any and all other moneys received by the Mortgagor pursuant to or under the terms of this Mortgage or in any proceedings hereunder, the application of which has not elsewhere herein been specifically provided for, shall be applied as follows:

FIRST: To the payment of the indebtedness of the Owner to the Mortgagor, and the Note evidencing the same, and all the sums now or hereafter secured hereby, whether due or not, and the interest thereon, and all of Mortgagor's damages, liquidated or otherwise, hereunder, and any and all other expenses incurred and advances made by Mortgagor, and without limiting the generality hereof, advances made and expenses incurred for the protection of the Vessel and of Mortgagor's rights or the pursuance of its remedies hereunder, and to provide adequate indemnity against liens claiming priority over or equality with the lien of this Mortgage;

SECOND: To the payment of all expenses and charges, including, without limiting the generality hereof, the expenses of any retakings, any sale or sales, attorneys' fees, court costs, Marshal's and Sheriff's fees; and

THIRD: To the payment of any surplus thereafter remaining to the Owner or to whomsoever may be entitled thereto.

If such proceeds, net earnings or other moneys are not sufficient to pay the aggregate amounts specified in Paragraphs FIRST and SECOND above in full, the Mortgagee shall be entitled to collect the balance from the Owner or any other person liable therefor.

ARTICLE III

24. Until some one or more of the events of default or defaults hereinabove described shall happen, the Owner shall be suffered and permitted to retain actual possession and use of the Vessel.

25. For the purpose of endorsement of this First Preferred Ship Mortgage on the Marine Document of the Vessel as required by Liberian Maritime Law, the total amount is ONE HUNDRED NINE THOUSAND (\$109,000.00) DOLLARS, lawful money of the United States of America, and interest thereon, and performance of Mortgage covenants; and the maturity date is ^{May} ~~April~~ 16, 1969; and the discharge amount is the same as the total amount.

26. All the recitals, covenants, promises, stipulations and agreements of the Owner in this Mortgage contained shall be binding upon the Owner and the Mortgagee and their respective successors and assigns and shall inure to the benefit of the Owner and the Mortgagee and their respective successors and assigns.

27. The Owner hereby irrevocably appoints BORDAS CORPORATION, a New York corporation, whose principal office is at 98 Front Street, New York, New York, as its Agent upon whom process may be served in any action or proceeding brought by Mortgagee in any court or judicial tribunal, and Owner agrees that service upon such Agent or Agents shall have the same effect for all purposes as though service had been personally made upon Owner. Owner further agrees that if said Agent (or any successor Agent) shall move from its present address, resign, dissolve or for any other reason be unwilling or unable to act as Agent for Owner, Owner

shall forthwith appoint another corporate Agent having its principal office in New York, New York, and shall furnish Mortgagor with written notice of such appointment and acceptance thereof, and Owner's failure so to do shall constitute a default hereunder.

28. This Mortgage may be executed simultaneously in any number of counterparts and all such counterparts executed and delivered each as an original shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Owner has executed this Mortgage the day and year first above written.

CARIBBEAN CARRIERS LIMITED

By Devon Orman

ACKNOWLEDGMENT

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

On this 16th day of May, 1967, before me came
DIEGO E. BORDAS, to me known, who being by me duly sworn, deposed
and said that he resides at Apartado de Correos 500, Santo Domingo,
R. D.; that he is the Secretary and Treasurer of CARIBBEAN CARRIERS
LIMITED, the corporation described in and which executed the fore-
going Mortgage; that he knows the seal of said Corporation; that the
seal affixed to said Mortgage is such Corporation's seal; that said
seal was so affixed by order of the Board of Directors of said Corpora-
tion and that he signed his name to said Mortgage by like order; and
acknowledged the said Mortgage to be his free act and deed and the
free act and deed of said Corporation.

Martin Gold

Notary Public

MARTIN GOLD
NOTARY PUBLIC, State of New York
No. 0243015
Qualified in Westchester County
Certificate Issued in West York County
Commission Expires March 30, 1968

STATE OF NEW YORK }
) SS:
COUNTY OF NEW YORK)

AFFIDAVIT OF GOOD FAITH

DIEGO E. BORDAS, being duly sworn, deposes and says
that he is the Secretary and Treasurer of CARIBBEAN CARRIERS LIMITED,
the corporation described in and which executed the above and foregoing
Mortgage; that said Mortgage is made by said Corporation in good faith
and without any design to hinder, delay or defraud any existing or
future creditor of the said Corporation, or any lienor of the mortgaged
Vessel; and that this Affidavit is made pursuant to an order of the
Board of Directors of said Corporation.

DEVOZ Orman

Subscribed and Sworn to
before me this 16th day
of May, 1967.

Martin Gold

Notary Public

MARTIN GOLD
NOTARY PUBLIC, State of New York
No. 0243015
Qualified in Westchester County
Certificate Issued in West York County
Commission Expires March 30, 1968

\$109,000.00

New York, New York
May 16, 1967

FOR VALUE RECEIVED, the undersigned, CARIBBEAN CARRIERS LIMITED, a Liberian corporation, promises to pay to THE MASTAN COMPANY, INCORPORATED, or order, at its offices at 640 Fifth Avenue, New York, New York, or at such other place as the holder hereof may designate, the sum of One Hundred Nine Thousand (\$109,000.00) Dollars in lawful money of the United States of America, as follows:

Twenty-four (24) consecutive monthly installments, the first of which, due and payable one month after date, is in the amount of Four Thousand Five Hundred Forty-One Dollars and Eighty-Two Cents (\$4,541.82), and twenty-three (23) of which are each in the amount of Four Thousand Five Hundred Forty-One Dollars and Sixty-Six Cents (\$4,541.66), with interest of six (6%) per cent per annum on unpaid principal balances computed on the basis of a 360 day year, and an additional charge, payable on demand, computed at the rate of two (2%) per cent per month on the principal sum or any part thereof which may be in default, such additional charge to be payable after as well as before maturity.

This Note evidences indebtedness for money loaned pursuant to a Loan Agreement between Payee and the undersigned dated April 11, 1967, and is secured by a First Preferred Ship Mortgage of even date on the Liberian Vessel CARIBE, Official Number 2393.

If any installment hereof, or interest, is not paid when due, or if undersigned defaults in performance of any of its covenants and agreements contained in said Loan Agreement and Mortgage, the holder hereof may at its option declare the entire amount of principal then unpaid, and interest, immediately due and payable, and upon such declaration, the entire unpaid principal, and interest, shall become and be immediately due and payable.

This note may be prepaid at any time upon payment of the entire principal balance then due, plus interest to date of prepayment.

Presentment, demand, notice of non-payment, protest and notice of protest are hereby waived.

CARIBBEAN CARRIERS LIMITED

By _____

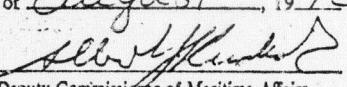
EXHIBIT A

949

PORT OF NEW YORK
OFFICE OF THE DEPUTY COMMISSIONER
OF MARITIME AFFAIRS OF THE
REPUBLIC OF LIBERIA

I HEREBY CERTIFY THAT the within is a true copy of the instrument
received for record and recorded in this office in BOOK PLW/9
at PAGE 315 on May 16 1967
at 115 P.M. EDST

GIVEN under my hand and seal this 15th
day of August, 1975


Deputy Commissioner of Maritime Affairs
of the Republic of Liberia



959

SUPPLEMENTAL INDENTURE

To

FIRST PREFERRED SHIP MORTGAGE
(Dated and Recorded May 16, 1967 -
Liberia - Book FM 19 Page 315)

On

M. S. CARIBE (O. N. 2393)

OWNER: CARIBBEAN CARRIERS LIMITED

MORTGAGEE: THE MASTAN COMPANY, INCORPORATED

SUPPLEMENTAL INDENTURE made this 8th day of February, 1968, by and between CARIBBEAN CARRIERS LIMITED, a Liberian corporation, (herein called "Owner") and THE MASTAN COMPANY, INCORPORATED, a Delaware corporation, (herein called "Mortgagee");

WHEREAS:

1. Owner represents and warrants that the Motor Screw Vessel CARIBE (the "Vessel"), Liberian Official Number 2393, of 3,864 gross and 2,156 net tons, is now owned by it free and clear of any mortgages, liens and encumbrances other than a First Preferred Ship Mortgage (the "Mortgage") to Mortgagee dated May 16, 1967, recorded the same day in the Office of the Deputy Commissioner of Maritimo Affairs of the Republic of Liberia in Book FM 19 Page 315, securing indebtedness and interest payable to Mortgagee as provided in a Promissory Note for One Hundred Nine Thousand (\$109,000.00) Dollars U. S. currency (herein called "Note No. 1"), a copy of which is annexed to the Mortgage as Exhibit "A"; and

2. By reason of payments made, the amount owing on Note No. 1 is now \$72,656.56, and interest, free of

969

offset, defense or counterclaim; and

3. The Mortgagor has this day made an additional loan of Twenty-Seven Thousand (\$27,000.00) Dollars U. S. currency, to Owner which is repayable

In fifteen (15) installments of One Thousand Eight Hundred (\$1,800.00) Dollars each commencing on the 16th day of March 1963 and on the 16th day of each consecutive month thereafter together with interest at the rate of six and five-eighths (6 5/8%) per cent per annum on unpaid principal balances computed on the basis of a 360 day year, payable with each of such installments of principal, and, an additional charge of two (2%) per cent per month payable ON DEMAND on the principal sum or any part thereof which may be in default, said additional charge to be payable after as well as before maturity. Should there be an increase in the interest rate chargeable to Mortgagor by the New York commercial banks, the interest rate hereunder shall be proportionately increased, provided, however, that such increased rate shall not exceed the maximum rate, if any, permitted under applicable law. In determining the interest rate subject to increase hereunder, the finance fee, if any, paid or payable by Owner, shall be taken into account.

Said additional loan is evidenced by Owner's Promissory Note of even date herewith, substantially in the form and substance of Exhibit "B" annexed hereto and made a part hereof, so that Owner's aggregate indebtedness to Mortgagor is now Ninety-Nine Thousand Six Hundred Fifty-Six Dollars and Fifty-Six Cents (\$99,656.56), and interest; and

4. The Owner and the Mortgagor now execute and deliver this Supplemental Indenture for the purpose of supplementing, amending and modifying the Mortgage so that the lion of the Mortgage shall secure the payment of Owner's total present indebtedness of ~~Ninety-Nine Thousand Six Hundred Fifty-Six Dollars and Fifty-Six Cents~~ ^{Ninety-Five} (\$99,656.56) and interest, as evidenced by said Note No. 1, and by Note No. 2 (Exhibit "B"), and the performance

and observance of and compliance with all covenants, terms and conditions contained in said Notes, the Mortgage, and this Supplemental Indenture; and

5. Owner has represented and warranted and hereby represents and warrants that all requirements of law and of Owner's By-Laws and Certificate of Incorporation have been fully complied with, and all other acts and things have been done and performed to make the Mortgage as supplemented, amended and modified by this Supplemental Indenture, and Note No. 2 delivered by Owner to Mortgagee, and all Agreements now and heretofore made by Owner with Mortgagee, the valid and legally binding obligations of the Owner in accordance with their respective terms, and to constitute this Supplemental Indenture a valid, binding and legal instrument in accordance with its terms;

NOW, THEREFORE, THIS SUPPLEMENTAL INDENTURE, WITNESSETH:

1. That in consideration of the promises, the terms and the mutual covenants herein contained, and for other valuable considerations, receipt whereof is hereby acknowledged, to secure the payment of indebtedness now owing by Owner to Mortgagee aggregating Ninety-Nine Thousand Six Hundred Fifty-Six Dollars and Fifty-Six Cents (\$99,656.56), U. S. currency, and interest thereon, and to secure said Note No. 1 and said Note No. 2, and the performance and observance of and compliance with all covenants, terms and conditions contained in the Mortgage, the said Notes and in this Supplemental Indenture, and, to amend and modify the Mortgage

as herein set forth, the parties execute and deliver this SUPPLEMENTAL INDENTURE.

II. It is hereby covenanted, declared and agreed that the title of the Mortgage, and the said Mortgage, secures payment of Owner's total indebtedness of Ninety-Nine Thousand Six Hundred Fifty-Six Dollars and Fifty-Six Cents (\$99,656.56), and the interest thereon, to Mortgagor, and, Note No. 1, and Note No. 2, and the performance and observance of and compliance with all covenants, terms and conditions contained in the Mortgage, the Notes and this Supplemental Indenture.

III. Wherever in the Mortgage there is reference to the "Note", such reference shall be deemed to refer to Note No. 1 and Note No. 2.

IV. THE TOTAL AMOUNT of the Mortgage is now Ninety-Nine Thousand Six Hundred Fifty-Six Dollars and Fifty-Six Cents (\$99,656.56), lawful money of the United States of America, and interest thereon, and performance of Mortgage covenants; and, the final date of maturity is May 16, 1969, and, the discharge amount is the same as The Total Amount.

V. This Supplemental Indenture is amendatory of and supplemental to the Mortgage and shall be construed with and as a part thereof; and all of the covenants, warranties and agreements of the Owner contained in the Mortgage, and in Note No. 1 and in Note No. 2 are incorporated herein; and except as herein expressly provided, all of the terms, provisions and conditions of the Mortgage, and all other agreements and undertakings made by Owner with the Mortgagor for its benefit remain unmodified and in full force and effect.

VI. This Supplemental Indenture may be executed in any number of counterparts and all such counterparts executed and delivered, each as an original, shall for all purposes be deemed to be an original.

IN WITNESS WHEREOF, the Parties hereto have duly executed and delivered this Supplemental Indenture on the day and year first above written.

CARIBBEAN CARRIERS LIMITED

By Eric C. Clegg
Secretary and Treasurer

THE MASTAN COMPANY, INCORPORATED

By Sam Bickel
Vice President

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

On this 8th day of February, 1968, before me personally came DIEGO E. BORDAS, to me known, who being by me duly sworn, did depose and say that he resides at Acacia No. 5, Newport, San Juan, Puerto Rico; that he is Secretary and Treasurer of CARIBBEAN CARRIERS LIMITED, a Liberian corporation, one of the corporations described in and which executed the foregoing instrument; that he signed the said instrument for and in behalf of said corporation by order and authority of the Board of Directors of said corporation and that the same is the free and voluntary act and deed of CARIBBEAN CARRIERS LIMITED for the uses and purposes therein expressed.

Elio E. Berquist

Notary Public

Elio E. Berquist
Notary Public, State of New York
No. 31-282559
C-12 of New York
Commission Expires August 2, 1971

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

On this 8th day of February, 1968, before me personally came SAMUEL W. BARACH, to me known, who being by me duly sworn, did depose and say that he resides at 146 Central Park West, New York, New York; that he is Vice President of THE MASTAN COMPANY, INCORPORATED, a Delaware corporation, one of the corporations described in and which executed the foregoing instrument; ~~that he knows the seal of said corporation, that the seal affixed to said instrument is such corporate seal, that it was affixed to said instrument by authority of the Board of Directors of said Corporation, and that he signed his name thereto by~~ ^{88842 U.P.T.H. F. 1968} and ~~and~~ ¹⁹⁶⁸ that the same is the free and voluntary act of said THE MASTAN COMPANY, INCORPORATED for the uses and purposes therein expressed.

Elio E. Berquist

Notary Public

Elio E. Berquist
Notary Public, State of New York
No. 31-282559
C-12 of New York
Commission Expires August 2, 1971

AFFIDAVIT OF GOOD FAITH

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

I, DIEGO E. BORDAS, being duly sworn, depose and say
that I am Secretary and Treasurer of CARIBBEAN CARRIERS LIMITED,
a Liberian corporation, the Corporation described in and which
executed the foregoing Supplemental Indenture as Owner of the
Liberian Vessel M. S. CARIBE (O. N. 2393); that the said Supple-
mental Indenture is made in good faith and without any design
to hinder, delay or defraud any existing or future creditor of
said CARIBBEAN CARRIERS LIMITED or any lienor of the mortgaged
Vessel, and that this Affidavit is made pursuant to an order of
the Board of Directors of said CARIBBEAN CARRIERS LIMITED.

E. E. B.

Subscribed and Sworn to before me
this 8th day of February, 1968.

Eliot E. Bernick
Notary Public

ELIOT E. BERNICK
Notary Public State of New York
No. 31-020050
Qualified in New York County
Commission Expires March 30, 1968

\$27,000.00

New York, April 1960
Wednesday

FOR VALUE RECEIVED, undersigned, CARIBBEAN CARRIERS LTD., a Liberian corporation, promises to pay to the order of THE MASAN CO. COMPANY, INCORPORATED, at 610 Fifth Avenue, New York, New York, or at such other place as the holder hereof may designate, the sum of TWENTY-SEVEN THOUSAND (\$27,000.00) DOLLARS, in lawful money of the United States of America, as follows:

In fifteen (15) installments of One Thousand Eight Hundred (\$1,000.00) Dollars each commencing on the 15th day of March 1960 and on the 15th day of each consecutive month thereafter together with interest at the rate of six and five-eighths (6 5/8%) per cent per annum on unpaid principal balances computed on the basis of a 360 day year, payable with each of such installments of principal, and, an additional charge of two (2) per cent per month payable ON DEMAND on the principal sum or any part thereof which may be in default, said additional charge to be payable after as well as before maturity.

Should there be an increase in the interest rate chargeable to the holder hereof by the New York commercial banks, the interest rate hereunder shall be proportionately increased, provided, however, that such increased rate shall not exceed the maximum rate, if any, permitted under applicable law. In determining the interest rate subject to increase hereunder, the finance fee, if any, paid or payable by undersigned shall be taken into account.

This Note evidences an indebtedness for money this day loaned by Payee to the undersigned and is secured by a First Preferred Ship Mortgage, as amended by a Supplemental Indenture of even date, affecting the Liberian Vessel N. S. CHAMPS, Serial Number 2270, Said First Preferred Ship Mortgage, as amended, also secures indebtedness of the undersigned to Payee in the sum of \$72,565.56, and interest, payable as stated in a Promissory Note, a copy of which is annexed as Exhibit "A" to the said First Preferred Ship Mortgage.

If any installment of principal or interest is not paid when due, or in the event of a default in the performance of any of the terms, provisions and conditions contained in said Mortgage and Supplemental Indenture, the entire unpaid principal sum shall, at the option of the holder hereof, become immediately due and payable.

Presentment for payment, demand, notice of non-payment, protest and notice of protest are hereby waived.

CARIBBEAN CARRIERS LTD.

Note No. 3

By _____
Secretary and Treasurer

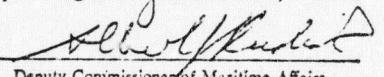
EXHIBIT "B"

1039

P O R T O F N E W Y O R K
O F F I C E O F T H E D E P U T Y C O M M I S S I O N E R
O F M A R I T I M E A F F A I R S O F T H E
R E P U B L I C O F L I B E R I A

I HEREBY CERTIFY THAT the within is a true copy of the instrument
received for record and recorded in this office in BOOK DM 120
at PAGE 98 on February 8 1968
at 4:35 P.M. EST.

GIVEN under my hand and seal this 15th
day of August, 1975


Deputy Commissioner of Maritime Affairs
of the Republic of Liberia



1849

SECOND SUPPLEMENTAL INDENTURE

To

FIRST PREFERRED SHIP MORTGAGE

On

M. S. CARIBE (O. N. 2393)

OWNER: CARIBBEAN CARRIERS LIMITED

MORTGAGEE: THE MASTAN COMPANY, INCORPORATED

SECOND SUPPLEMENTAL INDENTURE made this 27th day of February, 1969, by and between CARIBBEAN CARRIERS LIMITED, a Liberian corporation, (herein called "Owner") and THE MASTAN COMPANY, INCORPORATED, a Delaware corporation, (herein called "Mortgagee");

WHEREAS:

1. Owner represents and warrants that the Motor Screw Vessel CARIBE (the "Vessel"), Liberian Official Number 2393, of 3,864 gross and 2,156 net tons, is now owned by it free and clear of any mortgages, liens and encumbrances other than a First Preferred Ship Mortgage (the "Mortgage") to Mortgagee dated May 16, 1967, recorded the same day in the Office of the Deputy Commissioner of Maritime Affairs of the Republic of Liberia in Book M. 19 Page 315, as amended by a Supplemental Indenture dated and recorded February 8, 1968 in Book PM 20 page 98, securing indebtedness and interest payable to Mortgagee as provided in a Promissory Note (herein called

1059

"Note No. 1"), a copy of which is annexed to the Mortgage and hereto as Exhibit "A", and in a Promissory Note, a copy of which is annexed to the Supplemental Indenture and hereto as Exhibit "B"; and

2. By reason of payments made, the amount owing on Note No. 1 and on Note No. 2 is now \$19,024.98, and interest, free of offset, defense or counterclaim; and

3. The Mortgagee has this day made an additional loan of Ninety-Five Thousand Four (\$95,004.00) Dollars U. S. currency, to Owner which is repayable

In twenty-one (21) installments of Four Thousand Five Hundred Twenty-Four (\$4,524.00) Dollars each commencing on the 16th day of June 1969 and on the 16th day of each consecutive month thereafter together with interest at the rate of seven (7%) per cent per annum on unpaid principal balances computed on the basis of a 360 day year, payable with each of such installments of principal, and, an additional charge of two (2%) per cent per month payable ON DEMAND on the principal sum or any part thereof which may be in default, said additional charge to be payable after as well as before maturity. Should there be an increase in the interest rate chargeable to Mortgagee by the New York commercial banks, the interest rate hereunder shall be proportionately increased, provided, however, that such increased rate shall not exceed the maximum rate, if any, permitted under applicable law. In determining the interest rate subject to increase hereunder, the finance fee, if any, paid or payable by Owner, shall be taken into account.

Said additional loan is evidenced by Owner's Promissory Note of even date herewith ("Note No. 3"), substantially in the form and substance of Exhibit "C" annexed hereto and made a part hereof, so that when added to indebtedness evidenced by Note No. 1 and Note No. 2, Owner's aggregate indebtedness to Mortgagee is now One Hundred Fourteen Thousand Twenty-Eight and 98/100 (\$114,028.98) Dollars, and interest; and

1069

4. The Owner and the Mortgagee now execute and deliver this Second Supplemental Indenture for the purpose of further supplementing, amending and modifying the Mortgage so that the lien of the Mortgage shall secure the payment of Owner's total present indebtedness of One Hundred Fourteen Thousand Twenty-Eight and 98/100 (\$114,028.98) Dollars, and interest, as evidenced by said Note No. 1 and by Note No. 2 and by Note No. 3, and the performance and observance of and compliance with all covenants, terms and conditions contained in said Notes, the Mortgage, and the Supplemental Indenture and this Second Supplemental Indenture; and

5. Owner has represented and warranted and hereby represents and warrants that all requirements of law and of Owner's By-Laws and Certificate of Incorporated have been fully complied with, and all other acts and things have been done and performed to make the Mortgage as supplemented, amended and modified heretofore and by this Second Supplemental Indenture, and Note No. 3 this day made and delivered by Owner to Mortgagee, and all Agreements now and heretofore made by Owner with Mortgagee, the valid and legally binding obligations of the Owner in accordance with their respective terms, and to constitute this Second Supplemental Indenture a valid, binding and legal instrument in accordance with its terms;

NOW, THEREFORE, THIS SUPPLEMENTAL INDENTURE, WITNESSETH:

I. That in consideration of the premises, the terms and the mutual covenants herein contained, and for other valuable considerations, receipt whereof is hereby acknowledged, to secure

the payment of indebtedness now owing by Owner to Mortgagor aggregating One Hundred Fourteen Thousand Twenty-Eight and 98/100 (\$114,028.98) Dollars, U. S. currency, and interest thereon, and to secure the indebtedness evidenced by said Note No. 1, said Note No. 2 and said Note No. 3, and the performance and observance of and compliance with all covenants, terms and conditions contained in the Mortgage, the said Notes, the Supplemental Indenture and in this Second Supplemental Indenture, and, to amend and modify the Mortgage as herein set forth, the parties execute and deliver this Second SUPPLEMENTAL INDENTURE.

- II. It is hereby covenanted, declared and agreed that the lien of the Mortgage, and the said Mortgage as amended, secures payment of Owner's total indebtedness of One Hundred Fourteen Thousand Twenty-Eight and 98/100 (\$114,028.98) Dollars and the interest thereon, to Mortgagor, and, the performance and observance of and compliance with all covenants, terms and conditions contained in the amended Mortgage, the said Notes and this Second Supplemental Indenture.
- III. Wherever in the Mortgage there is reference to the "note", such reference shall be deemed to refer to Note No. 1, Note No. 2 and Note No. 3.
- IV. The Total amount of the Mortgage is now One Hundred Fourteen Thousand Twenty-Eight and 98/100 (\$114,028.98) Dollars, lawful money of the United States of America, and interest thereon, and performance of Mortgage covenants; and, the

final date of maturity is February 16, 1971, and, the
discharge amount is the same as The Total Amount.

V. This Second Supplemental Indenture is amendatory of and supplemental to the Mortgage and shall be construed with and as a part thereof; and all of the covenants, warranties and agreements of the Owner contained in the Mortgage, as heretofore and now, and in Note No. 1, and in Note No. 2 and in Note No. 3 are incorporated herein; and except as herein expressly provided, all of the terms, provisions and conditions of the Mortgage, and all other agreements and undertakings made by Owner with the Mortgagee or for its benefit remain unmodified and in full force and effect.

VI. This Second Supplemental Indenture may be executed in any number of counterparts and all such counterparts executed and delivered, each as an original, shall for all purposes be deemed to be an original.

IN WITNESS WHEREOF, the Parties hereto have duly executed and delivered this Second Supplemental Indenture at New York, New York, on the day and year first above written.

CARIBBEAN CARRIERS LIMITED

By: K. E. B. Collier
Secretary and Treasurer

THE MASTAN COMPANY, INCORPORATED

By: John Collier
Vice President

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

On this 27th day of February, 1969, before me personally came DIEGO E. BORDAS, to me known, who, being by me duly sworn, did depose and say that he resides at Acacia No. 5, Newport, San Juan, Puerto Rico; that he is Secretary and Treasurer of CARIBBEAN CARRIERS LIMITED, a Liberian corporation, one of the corporations described in and which executed the foregoing instrument; that he signed the said instrument for and in behalf of said corporation by order and authority of the Board of Directors of said corporation and that the same is the free and voluntary act and deed of CARIBBEAN CARRIERS LIMITED for the uses and purposes therein expressed..

Elmer E. Berthoud

Notary Public

**THE JOURNAL OF
PHYSICAL CHEMISTRY**

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

On this 27th day of February, 1902, before me personally came SAMUEL W. SARACH, to me known, who being by me duly sworn, did depose and say that he resides at 146 Central Park West, New York, New York; that he is Vice-President of THE MASTAN COMPANY, INCORPORATED, a Delaware corporation, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said Corporation; that the seal affixed to said instrument is such corporate seal; that it was affixed to said instrument by authority of the Board of Directors of said Corporation, and that he signed his name thereto by like authority; and that the same is the free and voluntary act of said THE MASTAN COMPANY, INCORPORATED for the uses and purposes therein expressed.

and purposes therein ex-
Ehor E. Bernau

Notary Public

ELIOT C. HERZKAT
Metropolitan State of New York
Oneida County
Commissioner of Education No. 100, 100-1072

1109

EST 1971

AFFIDAVIT OF GOOD FAITH

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

I, DIEGO E. BORDAS, being duly sworn, depose and say
that I am Secretary and Treasurer of CARIBBEAN CARRIERS LIMITED,
a Liberian corporation, the Corporation described in and which
executed the foregoing Supplemental Indenture as Owner of the
Liberian Vessel M. S. CARIBE (O. N. 2393); that the said Supple-
mental Indenture is made in good faith and without any design to
hinder, delay or defraud any existing or future creditor of said
CARIBBEAN CARRIERS LIMITED or any lienor of the mortgaged Vessel,
and that this Affidavit is made pursuant to an order of the
Board of Directors of said CARIBBEAN CARRIERS LIMITED.

Eliot E. Gerhurt

Subscribed and Sworn to before me
this 27th day of February, 1969.

Eliot E. Gerhurt
Notary Public

ELIOT E. GERHURT
Notary Public, State of New York
No. 31-37530
Certified in New York County
Commission Expires March 30, 1969

119

\$109,000.00

New York, New York
May 17, 1967

FOR VALUE RECEIVED, the undersigned, CARIBBEAN CARRIERS
LIMITED, a Liberian corporation, promises to pay to THE EASTAN
COMPANY, INCORPORATED, or order, at its office at 640 Fifth Avenue,
New York, New York, or at such other place as the holder hereof may
designate, the sum of One hundred Nine Thousand (\$109,000.00) Dollars
in lawful money of the United States of America, as follows:

Twenty-four (24) consecutive monthly installments,
the first of which, due and payable one month after
date, is in the amount of Four Thousand Five Hundred
Forty-One Dollars and Eighty-Two Cents (\$4,541.82),
and twenty-three (23) of which are each in the amount
of Four Thousand Five Hundred Forty-One Dollars and
Sixty-Six Cents (\$4,541.66), with interest of six (6%)
per cent per annum on unpaid principal balance com-
puted on the basis of a 360 day year, and an additional
charge, payable on demand, computed at the rate of
two (2%) per cent per month on the principal due or any
part thereof which may be in default, such additional
charge to be payable after as well as before maturity.

This Note evidences indebtedness for money loaned pursuant
to a Loan Agreement between Payee and the undersigned dated April 11,
1967, and is secured by a First Preferred Ship Mortgage of even date
on the Liberian Vessel CARIBE, Official Number 2393.

If any installment hereof, or interest, is not paid when
due, or if undersigned defaults in performance of any of its obliga-
tions and agreements contained in said Loan Agreement and Mortgage,
the holder hereof may at its option declare the entire amount of
principal then unpaid, and interest, immediately due and payable,
and upon such declaration, the entire unpaid principal, and interest,
shall become and be immediately due and payable.

This note may be prepaid at any time upon payment of the
entire principal balance then due, plus interest to date of prepayment.

Presentment, demand, notice of non-payment, protest and
notice of protest are hereby waived.

CARIBBEAN CARRIERS LIMITED

By John Oermann

EXHIBIT "A"

1129

\$27,000.00

New York, New York
February 6, 1963

FOR VALUE RECEIVED, undersigned, CARIBBEAN CARRIERS
LIMITED, a Liberian corporation, promises to pay to the order of
THE NASTAN COMPANY, INCORPORATED, at 100 Fifth Avenue, New York,
New York, or at such other place as the holder hereof may designate,
the sum of TWENTY-SEVEN THOUSAND (\$27,000.00) DOLLARS, in lawful
money of the United States of America, as follows:

In fifteen (15) installments of One Thousand Eight
Hundred (\$1,800.00) Dollars each commencing on the
16th day of March 1963 and on the 16th day of each
consecutive month thereafter together with interest
at the rate of six and five-eighths (6 5/8%) per cent
per annum on unpaid principal balances computed on the
basis of a 360 day year, payable with each of such
installments of principal, and, an additional charge
of two (2%) per cent per month payable ON DEMAND on
the principal sum or any part thereof which may be
in default, said additional charge to be payable after
as well as before maturity.

Should there be an increase in the interest rate charge-
able to the holder hereof by the New York commercial banks, the
interest rate hereunder shall be proportionately increased, provided,
however, that such increased rate shall not exceed the maximum rate,
if any, permitted under applicable law. In determining the interest
rate subject to increase hereunder, the finance fee, if any, paid or
payable by undersigned shall be taken into account.

This Note evidences an indebtedness for money this day
loaned by Payee to the undersigned and is secured by a First
Preferred Ship Mortgage, as amended by a Supplemental Indenture
of even date, affecting the Liberian Vessel H. S. CARIBBEAN, Official
Number 2393, said First Preferred Ship Mortgage, as amended, also
secures indebtedness of the undersigned to Payee in the sum of
\$72,563.56, and interest, payable as stated in a Provisory Note,
a copy of which is annexed as Exhibit "A" to the said First
Preferred Ship Mortgage.

If any installment of principal or interest is not paid
when due, or in the event of a default in the performance of any
of the terms, provisions and conditions contained in said Mortgage
and Supplemental Indenture, the entire unpaid principal balance
shall, at the option of the holder hereof, become immediately due
and payable.

Presentment for payment, demand, notice of non-payment,
protest and notice of protest are hereby waived.

CARIBBEAN CARRIERS LIMITED

Note No. 2.

By *[Signature]*
Secretary and Director

EXHIBIT "B"

1134

\$95,004.00

New York, New York
February 27, 1969

FOR VALUE RECEIVED, undersigned, CARIBBEAN CARRIERS LIMITED, a Liberian corporation, promises to pay to the order of THE MASTAN COMPANY, INCORPORATED, at 640 Fifth Avenue, New York, New York, or at such other place as the holder hereof may designate, the sum of NINETY-FIVE THOUSAND AND FOUR (\$95,004.00) DOLLARS, in lawful money of the United States of America, as follows:

In twenty-one (21) installments of Four Thousand Five Hundred Twenty-Four (\$4,524.00) Dollars each commencing on the 16th day of June, 1969 and on the 16th day of each consecutive month thereafter together with interest at the rate of seven (7%) percent per annum on unpaid principal balances computed on the basis of a 360-day year, payable with each of such installments of principal, and, an additional charge of two (2%) percent per month payable ON DEMAND on the principal sum or any part thereof which may be in default, said additional charge to be payable after as well as before maturity.

Should there be an increase in the interest rate chargeable to the holder hereof by the New York commercial banks, the interest rate hereunder shall be proportionately increased, provided, however, that such increased rate shall not exceed the maximum rate, if any, permitted under applicable law. In determining the interest rate subject to increase hereunder, the finance fee, if any, paid or payable by undersigned shall be taken into account.

This Note evidences an indebtedness for money this day loaned by Payee to the undersigned and is secured by a First Preferred Ship Mortgage, as heretofore amended and as amended by a Second Supplemental Indenture of even date, affecting the Liberian Vessel M. S. CARIBE, Official Number 2393. Said First Preferred Ship Mortgage, as amended, also secures indebtedness of the undersigned to Payee in the sum of \$19,024.98, and interest, payable as stated in Promissory Notes copies of which are annexed as Exhibit "A" and Exhibit "B" to the said Second Supplemental Indenture.

If any installment of principal or interest is not paid when due, or in the event of a default in the performance of any of the terms, provisions and conditions contained in said Mortgage, as amended, the entire unpaid principal balance shall, at the option of the holder hereof, become immediately due and payable.

This Note may be prepaid at any time upon five days prior written notice to the holder hereof by certified mail, return receipt requested. Upon the giving of such notice, the entire principal balance, plus accrued interest, shall become due and payable, at the option of the holder hereof on the prepayment date specified therein.

Presentment for payment, demand, notice of non-payment, protest and notice of protest are hereby waived.

NOTE NO. 3.

EXHIBIT "C"

CARIBBEAN CARRIERS LIMITED

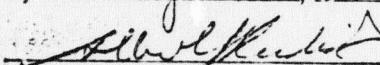
By: Diego Rodriguez
Secretary and Treasurer

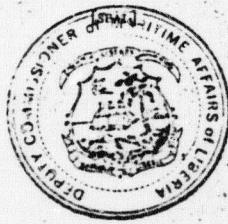
1149

PORT OF NEW YORK
OFFICE OF THE DEPUTY COMMISSIONER
OF MARITIME AFFAIRS OF THE
REPUBLIC OF LIBERIA

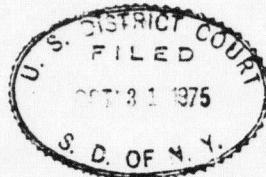
I HEREBY CERTIFY THAT the within is a true copy of the instrument
received for record and recorded in this office in BOOK DM 21
at PAGE 117 on February 27 1969
at 4:15 P.M. EST.

GIVEN under my hand and seal this 15th
day of August, 1975


Deputy Commissioner of Maritime Affairs
of the Republic of Liberia



1159



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
AMALIA HERBIRA ZORIANO SANCHEZ, as
personal representative of the estate
of NICOLA HERNANDEZ, Deceased, et al.,

75 Civ. 4166

Plaintiffs. : (KTD)

-against-

CARIBBEAN CARRIERS LIMITED, BORDAS
DOMINICAN CO., BORDAS & COMPANY,
BORDAS CORPORATION,

REPLY
AFFIDAVIT

Defendants. :
-----x

STATE OF NEW YORK)
:ss:
COUNTY OF NEW YORK)

VICTOR S. CICHANOWICZ, being duly sworn, deposes
and says:

That I am a member of the firm of CICHANOWICZ &
CALLAN, attorneys for the defendants herein, am familiar with
all the pleadings and proceedings heretofore had herein, and
submit this affidavit in reply to the answering affidavit of
the plaintiffs.

Neither the opposing affidavit nor the accompany-
ing memorandum dispute: (1) that the named defendants were not
properly served; (2) that, as found by the United States District
Court for the District of Puerto Rico, none of the substantial
contacts required for the application of the Jones Act existed
in this case; (3) that actions under United States Laws as well
as the Liberian Law in any event are time barred; (4) that if
actions under the Jones Act and the Death on the High Seas Act
are time barred, this Court lacks jurisdiction over the subject
matter of this action because complete diversity is lacking

between all of the parties to this action; and (5) the service of the notice to take the deposition of Mr. Callan was not properly made.

The basic contention of the plaintiffs seems to be that since some of the officers and stockholders of the prior owner, - CARIBBEAN CARRIERS LTD., held United States citizenship and the Liberian Registry of the M/V CARIBE was not marked stricken on the mortgage card of the Bureau of Maritime Affairs of the Republic of Liberia in New York City until October 22, 1971, this Court should disregard the fact that on June 25, 1971 CARIBBEAN CARRIERS LTD. sold said vessel to BORDAS LINEA DOMINICANA, a Dominican corporation and at the time in question said vessel flew the flag of the Dominican Republic, even though according to the findings of the District Court of Puerto Rico there was a valid transfer of ownership from CARIBBEAN CARRIERS LTD. to BORDAS LINEA DOMINICANA and the vessel flew the flag of the Dominican Republic and not Liberia.

A reading of the complaint which was filed in the District Court for Puerto Rico shows that claims as to ownership by CARIBBEAN CARRIERS LTD., the Liberian flag of the M/V CARIBE, and ownership and control of the vessel by United States citizens were raised and rejected.

At page 7 of their memorandum plaintiffs seek to avoid the adjudication in Puerto Rico by claiming that the current action has at least two different elements which did not exist in the Puerto Rican action, viz., the demonstration of American ownership of the M/V CARIBE and the ineffectiveness of the attempted transfer of registry of the ship from Liberian

to Dominican registry.

In paragraph Forty-Second of the complaint filed in the Puerto Rico action it is alleged:

"That citizens of the United States formed a foreign corporation and placed the M/V CARIBE under a Liberian flag."

While in paragraph Fortieth it is alleged, "That the Liberian flag of the M/V CARIBE is illusory." In paragraph Sixty-Ninth it is also alleged: "That at all times hereinafter mentioned the vessel flew the flag of Liberia." In paragraph Seventieth it is stated that: "Plaintiffs also rely upon the laws of Liberia and respectfully call the attention of this Honorable Court to the provisions of said laws, including those set forth in this complaint."

These and many of the other allegations are repeated in the complaint filed in the within action. Paragraph Forty-Second is restated verbatim in paragraph Twenty-Third, and paragraph Sixty-Ninth and Seventieth in paragraphs Forty-Eighth and Forty-Ninth respectively, of the within action. The allegations in the complaint are basically the same except that in the Fifth Cause of Action in the within suit plaintiffs set forth additional provisions of the Liberian Law and the so-called rules of International Law.

In essence what the plaintiffs contend is that these two so-called elements are arguments which they did not raise in the Puerto Rican action. As the Court pointed out in Vassos v. Societa Transoceanica Canopus, S.A., 143 F. Supp. 945, 946 affirmed 272 F.2d 182 cert. den. 362 U.S. 935, a litigant

is bound to set forth in his first suit every ground of recovery which he claims to exist and upon which he relied, and cannot be permitted to rely upon them piecemeal in successive actions to recover for the same wrong and injury.

The only new matter is the mortgage which CARIBBEAN CARRIERS LTD. had on the M/V CARIBE during its ownership. Said mortgage was satisfied and cancelled, according to Plaintiff's Exhibit 1 on April 22, 1971. The mortgage nor anything contained therein in no way is inconsistent with or changes the fact that on June 25, 1971 CARIBBEAN CARRIERS LTD. sold the M/V CARIBE to BORDAS LINEA DOMINICANA and from that day on was not the owner of said vessel.

Nor do any of the allegations with respect to either the Liberian law or International law, assuming it has any application, establish anything other than what the District Court of Puerto Rico found as to ownership or flag of the M/V CARIBE at the time in question. As the United States Supreme Court pointed out in Lauritzen v. Larsen, 345 U.S. 571, 584:

"Nationality is evidenced to the world by the ship's papers and its flag. The United States has firmly and successfully maintained that the regularity and validity of a registration can be questioned only by the registering state."

None of the cases cited by the plaintiffs hold otherwise. As a matter of fact, on April 22, 1971, the Commissioner of Maritime Affairs for the Republic of Liberia authorized CARIBBEAN CARRIERS LTD. to transfer the M/V CARIBE to Dominican Registry and flag, even without change of ownership. (Exhibit F

annexed hereto). According to said exhibit, permission to transfer the M/V CARIBE to Dominican Registry and flag was authorized by Title 22 of the Liberian Code of Laws of 1956, as amended. This is the same Title of the Liberian Law which plaintiffs contend prohibit transfer.

Article 5 of the 1958 Geneva Convention on the Law on the High Seas specifically provides that the vessel's nationality is determined by law of the vessel's flag. It provides in part:

"Ships have the nationality of the State whose flag they are entitled to fly."

Liberia, however, was not a signatory to the 1958 Geneva Convention and therefore even if the interpretation which plaintiffs seek to give this Convention could be given, it has no controlling effect in this case. As the United States Supreme Court pointed out in McCulloch v. Marineros De Honduras, 372 U.S. 10, 21-22 (1963), the rule that the law of the flag ordinarily governs the internal affairs of a vessel is a well established rule of international law and the law of the vessel's flag cannot be disregarded unless the statute sought to be enforced expressly authorizes such disregard.

The arguments advanced in the opposing affidavit with respect to ownership by United States citizens of the M/V CARIBE at the time in question is equally without merit. The stock ownership of CARIBBEAN CARRIERS LTD., whatever it may have been, is neither relevant or determinative of the ownership of the M/V CARIBE after it was sold to BORDAS LINEA DOMINICANA.

The sale was a valid one as found by Judge Toledo and it makes no difference what took place or where it took place under prior ownership. The fact that certain members of the Bordas family may have engaged in other businesses does not establish that they have continued to engage in the business of BORDAS LINEA DOMINICANA, or that because one member of the Bordas family held dual citizenship, other members of the family also did so. The M/V CARIBE at the time in question was owned by BORDAS LINEA DOMINICANA, a Dominican corporation, and properly flew the flag of the Dominican Republic. In holding as Judge Toledo did at page 5 of his decision that "the required substantial contacts do not exist in this case", Judge Toledo found on the basis of the uncontested affidavit of Diego^o Bordas (Exhibit E) that Diego Bordas was the sole owner of BORDAS LINEA DOMINICANA, a duly created entity under the Laws of the Dominican Republic, that he was a citizen and resident of the Dominican Republic, and that the base of the ship's operations was in Santo Domingo, the Dominican Republic. The plaintiffs' contentions with respect to citizenship, ownership transfer and the beliefs of plaintiffs' attorney present no controlling facts which were not before Judge Toledo or which, if they had any valid basis, were not submitted to Judge Toledo.

WHEREFORE, it is respectfully requested that the relief herein previously prayed for be granted in all respects.

Victor S. Cichanowicz

Sworn to before me this
30th day of October, 1975.



THE REPUBLIC OF LIBERIA
Treasury Department
Bureau of Maritime Affairs

328-71

PERMISSION FOR TRANSFER OF LIBERIAN VESSEL

1. Name of Vessel B. M. CARRIER	2. Official Number 2293	3. Call Sign 6ZMH	4. Gross Tonnage 2364	5. Net Tonnage 2139
6. Type of Vessel CARGO	7. Year Built 1943	8. Place Built WILMINGTON, CALIFORNIA, U.S.A.	9. Certificate of Registry (Number and Date of Issuance) 302-69 (8/21/69)	
10. Name and Domicile of Registered Owner CARIBBEAN CARRIERS LIMITED			11. Ship Radio Station License No. 3 1444-66	

Subject to the payment of outstanding charges and fees, if any, and the discharge or release as of record of the following liens against the herein described vessel recorded in the Office of the Commissioner or a Deputy Commissioner of Maritime Affairs:

No Liens or Encumbrances As of Record

permission is granted to the registered owner of the said vessel for transfer to **DOMINICAN REGISTRY AND FLAG WITHOUT CHANGE OF OWNERSHIP.**

A Certificate of Cancellation of Registry will be issued upon surrender to the Commissioner or a Deputy Commissioner of Maritime Affairs, or to a duly appointed agent of the Commissioner or a Deputy Commissioner of Maritime Affairs, of the vessel's currently valid Certificate of Registry (Item 9) and Ship Radio Station License (Item 11), and submission of the following additional documents and proofs:

The permission granted herewith shall be null and void after the expiration of ninety days from the date hereof.

Pursuant to the authority contained in Title 22 of The Liberian Code of Laws of 1956, as amended, it is hereby certified that permission has been granted for the transfer of the herein described vessel as set forth above.

Issued under my hand and seal at the Port of
New York, New York, U. S. A.

on this 22nd day of April, 1971

THE COMMISSIONER OF MARITIME AFFAIRS
ALBERT J. RUDICK

By:

Deputy Commissioner of Maritime Affairs



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
AMALIA HERBIRA ZORIANO SANCHEZ as :
personal representative of the estate
of NICOLA HERNANDEZ, Deceased, et al., :

Plaintiffs, :
-against- :
-----x

CARIBBEAN CARRIERS LIMITED, BORDAS
DOMINICAN CO., BORDAS & COMPANY,
BORDAS CORPORATION,

Defendants. :
-----x

MEMORANDUM AND ORDER
75 Civ. 4166

4/17/76 4

APPEARANCES:

THOMAS M. BREEN, ESQ.
Attorney for Plaintiffs

CICHANOWICZ & CALLAN, ESQS.
Attorneys for Defendants

KEVIN THOMAS DUFFY, D.J.

This is an action brought by the personal representatives of twenty-five Dominican and Columbian citizens who were employed on board a Dominican flag vessel at the time it disappeared on October 10, 1971 while enroute from Barranquilla, Columbia, to Santo Domingo, Dominican Republic. Defendants move to dismiss under Rule 12(b),

21
1239

Fed. R. Civ. P., on the grounds of improper service of process, res judicata, failure to state a claim upon which relief can be granted, and statute of limitations.

Plaintiffs had commenced a similar action in the District of Puerto Ricc. The action was dismissed in an Opinion and Order by Chief Judge Toledo which con- cluded that

"There are legal remedies in both the Republic of Columbia and the Dominican Republic available to plaintiffs. Any witnesses or documentary evidence relevant to this case should be either in one of the two countries, and their courts would be in a better position than this Court to compel the parties to pro- duce a disclosure of the available documentary or testimonial evidence. This Court will there- fore not take jurisdiction in this controversy between aliens to apply foreign law since clearly no substantial contacts qualify it as one over which we should exercise jurisdiction. Accord- ingly, the Court grants defendants' motion to dismiss and hereby dismisses the action with pre- judice."

1249

Sanchez v. Caribbean Carriers LTD., Civ. No. 87-72 at 7 (D. Puerto Rico April 18, 1975). The plaintiffs inform this Court that Chief Judge Toledo's decision is now on appeal. That the identical facts and issues presented by the instant action are sub judice in the United States Court of Appeals is sufficient reason for this Court to decline to accept jurisdiction.

In any event, it is unnecessary to pass on any of defendants other contentions for it is clear that process was not properly served and, therefore, the action should be dismissed under Rule 12(b)(5). It is the plaintiffs' burden to establish jurisdiction over defendants, McNutt v. General Motors Acceptance Corp., 298 U.S. 178, 189 (1936).

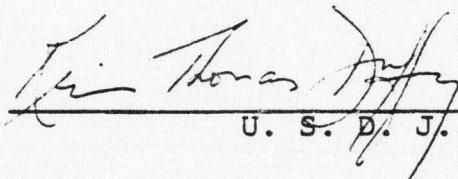
All four defendants were served by delivery of a copy of the summons and complaint to an associate at the firm of Cichanowicz & Callan. No one at the firm is an officer, managing or general agent, or person authorized to accept process for the defendants. Thus, Rule 4(d)(3) was not complied with. Defendant Bordas Corporation was dissolved by proclamation of the Secretary of State of New York (N.Y.S. Bulletin, Dec. 16, 1974).

Plaintiffs apparently concede the invalidity of service as to defendant Bordas & Company and states that "[s]ervice is also being effected in Puerto Rico"

Plaintiffs, in an off-hand manner, mention that service was made on Caribbean Carriers LTD. by registered mail through International Trust Company in Monrovia, Liberia, in an apparent attempt to comply with Rule 4(i). There is not even a hint that the organization was served in any way connected with the defendant. Furthermore, Judge Toledo found that defendant Caribbean did not own the vessel at the time of the accident. That much is at least binding under the principles of collateral estoppel.

The motion to dismiss is granted.

SO ORDERED.



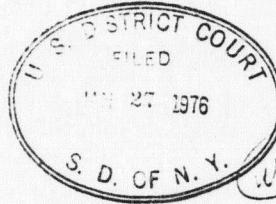
Eric Thomas Duffy
U. S. D. J.

Dated: New York, New York

January 20, 1976.

1269

1/27/76



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
AMALIA HERBIRA ZORIANO SANCHEZ as
personal representative of the estate : 75 Civil 4166 (KTD)
of NICOLA HERNANDEZ, deceased, et al

Plaintiffs	:	JUDGMENT
-against-	:	
CARIBBEAN CARRIERS LIMITED, BORDAS	:	
DOMINICAN CO., BORDAS & COMPANY,	:	
BORDAS CORPORATION	:	
Defendants	:	

----- X

The defendants having moved the Court pursuant to Rule 12(b),
of the Federal Rules of Civil Procedure, and the said motion having
come on to be heard before the Honorable Kevin Thomas Duffy, United
States District Judge, and the Court thereafter on January 22, 1976,
having handed down its memorandum opinion granting the said motion,
it is,

ORDERED, ADJUDGED and DECREED: That defendants CARIBBEAN
CARRIERS LIMITED, BORDAS DOMINICAN CO., BORDAS & COMPANY, BORDAS
CORPORATION, have judgment against plaintiffs AMALIA HERBIRA
ZORIANO SANCHEZ, as personal representative of the estate of
NICOLA HERNANDEZ, deceased, and all other plaintiffs, dismissing
the complaint.

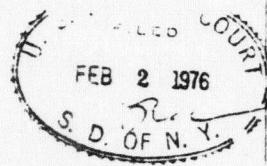
Dated: New York, N.Y.
January 27, 1976

Adele Mandelblatt
Clerk

1279

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



AMALIA HERBIRA ZORIANO SANCHEZ, as personal representative of the estate of NICOLA HERNANDEZ, Deceased, et al, :

75 Civ. 4166
(KTD)

Plaintiffs, :

against : NOTICE OF MOTION
FOR REARGUMENT

CARIBBEAN CARRIERS LIMITED, BORDAS DOMINICAN CO., BORDAS & COMPANY, BORDAS CORPORATION, :

Defendants, :

x

S I R S :

PLEASE TAKE NOTICE, that upon the annexed memorandum of Thomas M. Breen, dated January 30th, 1976, and upon all the pleadings and proceedings heretofore had herein, and the opinion of the Hon. Kevin Thomas Duffy, U.S.D.J. dated January 20th, 1976, the undersigned will move this Court before the Honorable Kevin Thomas Duffy, United States District Judge, at Room 618 of the United States Court House, Foley Square, in the Borough of Manhattan, City of New York, on the 17th day of February, 1976, at 10:00 o'clock in the forenoon of that day or as soon thereafter as Counsel can be heard for an Order pursuant to Rule 9 (m) of the General Rules of this Court granting reargument of the motions ruled upon in the Court's opinion # 43764, dated January 20th, 1976, including oral argument, and for such other and further relief as the Court may deem proper.

Dated: New York, New York

January 30th, 1976

Yours, etc.

TO Cichanowicz & Callan, Esqs.
80 Broad Street
New York, New York 10004

THOMAS M. BREEN
Attorney for Plaintiffs
160 Broadway
New York, New York 10038
BEEkman 3-3740

1289

ENDORSEMENT

This is a motion to reargue this Court's granting of defendants' motion to dismiss. The motion to reargue is granted.

Plaintiff's memorandum is addressed solely to the validity of service of process. As noted in the Memorandum and Order of this Court dated January 20, 1976, sufficiently of process was not the only reason for granting the motion. At page 3 it is stated that the existence of an appeal to the Court of Appeals for the First Circuit from the dismissal of the same causes of action between the same parties on the same facts "is sufficient reason for this Court to decline to accept jurisdiction."

Upon reconsideration, the original determination is adhered to and the dismissal of the action will stand.

SO ORDERED:

KEVIN T. DUFFY U.S.D.J.

New York, New York

February 18, 1976

17-94

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

x

AMALIA HERBIRA ZORIANO SANCHEZ, as
personal representative of the estate of
NICOLA HERNANDEZ, Deceased, et al,

75 Civ. 4166
(KTD)

Plaintiffs,

NOTICE OF
MOTION

against

CARIBBEAN CARRIERS LIMITED, BORDAS
DOMINICAN CO., BORDAS & COMPANY,
BORDAS CORPORATION,

Defendants.

164
MAR 1 1976

S I R S :

PLEASE TAKE NOTICE that upon the annexed affidavit of
THOMAS M. BREEN, sworn to the 26th day of February, 1976, the
annexed Per Curiam opinion of the First Circuit Court of Appeals, and
the pleadings and proceedings heretofore had herein, the undersigned will
move this Court at Room 518, United States Courthouse, Foley Square,
Borough of Manhattan, City and State of New York, on the 9th day of
March, 1976, at ten (10:00) A.M. in the forenoon, or as soon thereafter
as counsel can be heard, for an Order under Rule 4 of the Federal
Rules of Appellate Procedure, extending plaintiff's time to take an
appeal on this case, granting oral argument, and for such other,
further and different relief as the justice of the cause may require.

Dated: New York, New York

February 26th, 1976

THOMAS M. BREEN
Attorney for Plaintiffs
160 Broadway
New York, New York 10038
BElkman 3-3740

TO:

CICHANOWICZ & CALLAN, ESQS.
Attorneys for Defendants
80 Broad Street
New York, New York 10004

1309

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

x
75 Civ. 4166

AMALIA HERBIRA ZORIANO SANCHEZ, as
personal representative of the Estate of
NICOLA HERNANDEZ, Deceased, et al.,

: (KTD)

Plaintiffs, : AFFIDAVIT

against : -----

CARIBBEAN CARRIERS LIMITED, BORDAS
DOMINICAN CO., BORDAS & COMPANY ,
BORDAS CORPORATION,

Defendants. : x

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

THOMAS M. BREEN, being duly sworn, deposes and says :

I am the attorney for the plaintiffs in this action and I am familiar
with all the proceedings heretofore had herein.

During the early part of this month the appeal referring to the
M.V. CARIBE was argued in the United States Court of Appeals for the
First Circuit in Puerto Rico. Attached is a copy of the Per Curiam Opinion
sent to me by attorney Harry A. Ezratty representing the plaintiffs in
the Puerto Rico law suit. The words "with prejudice" were stricken
from the opinion and order of Chief Judge Jose V. Toledo, dated April
17th, 1975 -attached to the moving papers of the defendants dated September
11th, 1975.

From reading the attached Per Curiam Opinion, it is clear that
the plaintiffs can proceed with this law suit filed in this Court. In a
Memorandum and Order dated January 20th, 1976, the Court dismissed
this action. On the motion of the plaintiffs for reargument, the Court

131a

granted reargument and held that the existence of the appeal in the First Circuit "is sufficient reason for this Court to decline to accept jurisdiction." The endorsement of the Court was made on February 18th, 1976; consequently the plaintiffs' time to appeal expires on March 19th, 1976.

First of all, the plaintiffs would like an extension of time for at least 60 days to file their appeal. In addition the plaintiffs want to continue with discovery and other relief set up in the answering affidavit of the plaintiffs dated October 8th, 1975.

In the Puerto Rico action, the motions of the defendants were entitled "Motion to Dismiss for Lack of Jurisdiction". In the opinion of the Puerto Rico District Court the words "Summary Judgment" or "Dismissal on the Merits" nowhere appear. Therefore, the plaintiffs can continue with this action.

Your deponent has written to the Clerk's Office of the Court of Appeals to obtain an official slip copy of the Per Curiam Opinion.

Your deponent requested an oral argument on the original motion and the motion for reargument, but both requests were declined. Your deponent respectfully requests an oral argument on this motion.

WHEREFORE, your deponent respectfully requests :

1. The judgment of dismissal and the endorsement on the motion for reargument be withdrawn and the plaintiffs be permitted to continue with this action in the District Court.
2. The plaintiffs be given an extension of time to appeal.
3. The plaintiffs be permitted to take the testimony of Byron K. Callan and an expert on Liberian Law.
4. The defendants be required to respond to the notice of the plaintiffs to produce documents and to serve an answer setting

forth the provisions of Dominican and Colombian Law that they claim are applicable.

5. That the plaintiffs be permitted to serve subpoenas and take testimony showing that the ownership of the M. V. CARIBE was American.
6. The both parties be granted oral argument.
7. Such other and further relief as the justice of this cause may require.

THOMAS M. BREEN

Sworn to before me this

26th day of February, 1976.

SIDNEY JWORKIN
Notary Public, State of New York
No. 24-6130720
Qualified in Kings County
Commission Expires March 30, 1976

1339

Per Curiam. The sole question on this appeal is whether plaintiffs' action under the Jones Act and for unseaworthiness and death on the high seas should have been dismissed, in the words of the district court, "with prejudice". Appellants agree that dismissal was justified on the facts presented, but assert that since the merits were not reached, dismissal should not have been "with prejudice". Appellees argue that basic factual issues were adjudicated and that appellants should not be allowed to litigate further.

Although we do not in any sense mean to rule that the judgment should necessarily be construed as res judicata, we see no reason to preserve the "with prejudice" language in the judgment below. Under the circumstances, it would appear that it is better to eliminate all such language to prevent any question of the plaintiff's right to sue again in the future, and should a plaintiff do so, to have him do so in a separate proceeding, so as to enable the court in which this action is in its power to determine the extent to which this plaintiff has in effect obtained a final judgment.

The judgment below is affirmed except the words "with prejudice" and res judicata.

EXHIBIT I

1349

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 75-1263

AMALIA HERBIRA ZORIANO SANCHEZ, ET AL.,
Plaintiffs, Appellants,

v.

CARIBBEAN CARRIERS LTD., ET AL.,
Defendants, Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO
[Hon. Jose V. Toledo, U.S. District Court]

Before

*

McENTEE, CAMPBELL and MATTHES
Circuit Judges

* from the eighth circuit
sitting by designation

Harry A. Ezratty for appellants.
Jaime Picras, Jr., with whom Pieras & Esteves was on brief, for
appellees.

February 17, 1976

1359

Per Curiam. The sole question on this appeal is whether plaintiffs' action under the Jones Act and for unseaworthiness and death on the high seas should have been dismissed, in the words of the district court, "with prejudice". Appellants agree that dismissal was justified on the facts presented, but assert that since the merits were not reached, dismissal should not have been "with prejudice". Appellees argue that basic factual issues were adjudicated and that appellants should not be allowed to litigate further.

Although we do not in any sense mean to rule that the judgment should necessarily be construed as without prejudice, we see no need to preserve the "with prejudice" language in the judgment below. Under the circumstances, it seems preferable not to attempt to telegraph advance instructions concerning the effect of the judgment, but rather to leave it to the court before whom any further proceeding may be pending to determine the extent to which this judgment is an estoppel or bar. That court will have before it the allegations and record in the new proceeding for purposes of comparison with the present record and judgment, and will be best situated to rule on the effect of the present judgment.

The judgment below is affirmed except the words
"with prejudice" are stricken.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MAR 1 1976

-----X
AMALIA HERBIRA ZORIANO SANCHEZ, as
personal representative of the estate of :
NICOLA HERNANDEZ, Deceased, et al.,: 75 Civ. 4166
(KTD)Plaintiffs, :
-----XAFFIDAVIT
IN
OPPOSITION

- against -

CARIBBEAN CARRIERS LIMITED, BORDAS
DOMINICAN CO., BORDAS & COMPANY,
BORDAS CORPORATION,

: 75 Civ. 4166

Defendants.

-----X

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)VICTOR S. CICHANOWICZ, being duly sworn, deposes
and says:

That he is a member of the firm of CICHANOWICZ & CALLAN, attorneys for the defendants, is familiar with all the pleadings and proceedings heretofore had herein, and submits this affidavit in opposition to the motion of the plaintiffs, dated February 26, 1976.

It is respectfully submitted that the decision of the First Circuit Court of Appeals is not an open sesame to the continuance of this action in this Court and the harassment of the defendants. The only thing which that decision did was to remove the words "with prejudice" from the judgment of the District Court of Puerto Rico. As the Court of Appeals pointed out, by striking these words from the judgment, it did not in any sense mean to rule that the judgment should necessarily be construed as "without prejudice". The only purpose for the removal of these words was to enable any Court before whom any further proceeding might be pending to feel free to pass on whether the judgment of the District

Court of Puerto Rico was a bar or estoppel in that other proceeding. It should be noted, however, that the judgment of the District Court was otherwise affirmed in all respects and that the plaintiffs "agree that dismissal was justified on the facts presented".

It is well settled that a determination by a Court of competent jurisdiction is controlling on issues therein decided and may not be relitigated in another action. The plaintiffs seem to think that because the motion which the District Court of Puerto Rico was called upon to determine was entitled "Motion To Dismiss for Lack of Jurisdiction" and the District Court of Puerto Rico in its opinion did not use words such as "Summary Judgment" and "Dismissal on the Merits" the removal of the words "without prejudice" from the judgment destroyed the effect which the judgment of the District Court of Puerto Rico would have as res judicata or estoppel.

The plaintiffs evidently do not understand what a determination on the merits means. As is shown in the memorandum which is being submitted with this affidavit, a determination on the merits does not mean nor require that a Court pass on the ultimate substantive issues of a litigation before its determination becomes res judicata. An adjudication declining to reach such ultimate substantive issues is also an adjudication on the merits.

As the opinion of the District Court of Puerto Rico points out, it was the plaintiffs' contention the M/V CARIBE was owned and operated by CARIBBEAN CARRIERS, LTD. and/or BORDAS & COMPANY and that the substantial contacts which were necessary in order to disregard the law of the vessel's flag and apply the laws of the United States existed.

A reading of the complaint in that action which is annexed as Exhibit D to the moving papers filed on behalf of the defendants on their initial motion filed in this Court further shows various allegations as to ownership and control of the M/V CARIBE by United States citizens.

The decision of the District Court of Puerto Rico, among other things, decided that (1) the substantial contacts with the United States which are required for the application of United States laws to foreign flag vessels did not exist and (2) the M/V CARIBE was owned, at the relevant time by Bordas Linea Dominicana, a corporation organized and existing under the laws of the Dominican Republic, that the base of the ship's operations was at Santo Domingo and that CARIBBEAN CARRIERS, LTD., was not the owner.

According to the District Court of Puerto Rico, these findings were based on affidavits presented by the defendants and not contradicted by plaintiffs. It is of significance that one of the affidavits which was submitted on behalf of the defendants in the Puerto Rican action and which plaintiffs did not contradict and agreed in the Court of Appeals justified the dismissal, was the affidavit of one Diego Bordas which is annexed to the defendants' initial moving papers as Exhibit E.

According to that affidavit, the M/V CARIBE was purchased by Bordas Linea Dominicana on June 25, 1971 and operated by that company until its disappearance in October, 1971. The Chief Executive and sole owner of that company, which was an entity erected pursuant to the laws of the Dominican Republic, was said Diego Bordas, a citizen and resident of the Dominican Republic.

In their present motion, plaintiffs request this Court to withdraw its dismissal of the complaint and that they be permitted to continue the action in this Court and to take the testimony of Byron Callan, who was an officer of CARIBBEAN CARRIERS, LTD., and an expert on Liberian law, that the defendants be required to produce documents and set forth the provisions of the Dominican and Columbian law which they claim are applicable and that plaintiffs be permitted to serve subpoenas and take testimony to show American ownership of the M/V CARIBE.

According to the Per Curiam Opinion of the Court of Appeals, the plaintiffs agreed in that Court that the "dismissal was justified on the facts presented". Since the dismissal was based on the facts that:

(1) at the relevant times, the M/V CARIBE was owned and operated by Bordas Linea Dominicana; (2) Bordas Linea Dominicana was a corporation organized and existing under the laws of the Dominican Republic; (3) the Chief Executive and sole owner of Bordas Linea Dominicana was Diego Bordas, a citizen and resident of the Dominican Republic; (4) the offices of Bordas Linea Dominicana were in the Dominican Republic; (5) the M/V CARIBE was registered under the laws of the Dominican Republic and flew the Dominican flag; (6) the home port and base of operations of the M/V CARIBE was in the Dominican Republic; (7) the M/V CARIBE was not the property of either CARIBBEAN CARRIERS, LTD. or BORDAS & COMPANY at the time in question; (8) the crew of the M/V CARIBE were all Columbian or Dominican seamen who were hired either in Columbia or the Dominican Republic; (9) at the time the M/V CARIBE disappeared, she was in transit between Columbia and Santo Domingo in the Dominican Republic; (10) each of the plaintiffs is a

citizen of the Dominican Republic; and (11) the M/V CARIBE had not been in a United States port for more than one year. The relief which plaintiff seeks on this motion is clearly unwarranted and is designed solely for the purpose of harassing the defendants and burdening this Court with litigation which does not belong in this Court. Obviously, when the opposing affidavit speaks of the desire to take the testimony of Byron K. Callan and of an expert on Liberian law, and testimony showing American ownership of the M/V CARIBE, such testimony has no relevance to any action which the plaintiffs are entitled to pursue. Mr Callan is a former officer of CARIBBEAN CARRIERS, LTD. which, according to the undisputed facts on which the dismissal was based, did not own and operate the M/V CARIBE at the time in question. The testimony of an expert on Liberian law is also not relevant because, according to the undisputed facts, at the time in question the M/V CARIBE was registered under the laws of the Dominican Republic and flew the Dominican flag. Testimony showing American ownership of the M/V CARIBE is in conflict with the undisputed fact that the sole owner of Bordas Line Dominican, a Dominican corporation, which owned and operated the M/V CARIBE at the time in question was Diego Bordas, a citizen and resident of the Dominican Republic.

Accordingly, what the plaintiffs seek on their present application is the opportunity to establish something which is contrary to the facts which they concede justify the decision of the District Court of Puerto Rico and which the Court of Appeals affirmed. Both res judicata and estoppel clearly bar an action for such purposes.

Since the actions against CARIBBEAN CARRIERS, LTD., BORDAS & COMPANY and BORDAS CORPORATION are barred by the decision

of the District Court of Puerto Rico, it is irrelevant whether there has been service on them or not. Even if there has been service, the complaint as to them should be dismissed.

There is no indication that there has been any service on Bordas Linea Dominicana. Since the plaintiffs, in any event, cannot assert any causes of action under any law of the United States, the action in any event must be dismissed because of lack of diversity between it and the plaintiffs. (Point VI of initial Brief). Furthermore, even if plaintiffs could pursue claims against Bordas Linea Dominicana under laws of the United States, the actions, as pointed out in Points III and IV of defendants' initial Brief, are time barred.

WHEREFORE, it is respectfully prayed that the motion of the plaintiffs be denied in all respects and the complaint dismissed and that defendants have such other relief as may be proper in the premises.

Victor S. Cichanowicz

Sworn to before me this
11th day of March, 1976

1429

Motion denied
S. Orferey
Kevin Thomas Durrey

U.S. D.J.
New York, New York

April 19, 1976

W.H.

1439

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

5. (C) 1/24

AMALIA HERBIRA ZORIANO SANCHEZ, as personal representative of the estate of NICOLA HERNANDEZ, Deceased, et al , :

75 Civil 4166 (NTD)

Plaintiffs, :

NOTICE OF APPEAL

=against=

CARIBBEAN CARRIERS LIMITED, BORDAS DOMINICAN CO., BORDAS & COMPANY BORDAS CORPORATION, :

Defendants, :

x

NOTICE IS HEREBY GIVEN that AMALIA HERBIRA ZORIANO SANCHEZ, as personal representative of the estate of NICOLA HERNANDEZ Deceased, et al , plaintiffs above named hereby appeal to the United States Court of Appeals for the Second Circuit from the final order and judgment of the Honorable Kevin Thomas Duffy, U.S.D.J. dated January 27th, 1976, and signed by Honorable Raymond F. Burghardt, Clerk on the same date, the Memorandum and Order of the Honorable Kevin Thomas Duffy, U.S.D.J., dated January 20th, 1976, and the Endorsement on the motion for reargument by the Honorable Kevin Thomas Duffy, U.S.D.J. dated February 18th, 1976, granting judgment against the plaintiffs and in favor of the defendants dismissing the plaintiffs' complaint.

Dated: New York, New York

March 1976.

THOMAS M. BREEN
Attorney for Plaintiffs
Office & P.O. Address
160 Broadway
New York, New York 10038
Bekman 3-3740

TO:

CICHANOWICZ & CALLAN, ESQS.
80 Broad Street
New York, New York 10004

1449

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

x 75 Civil 4166

AMALIA HERBIRA ZORIANO SANCHEZ, as
personal representative of the estate of
NICOLA HERNANDEZ, Deceased, et al ,

K T D

Plaintiffs, :

AMENDED
NOTICE OF APPEAL

against

: 76 - 8112

CARIBBEAN CARRIERS LIMITED, BORDAS
DOMINICAN CO., BORDAS & COMPANY
BORDAS CORPORATION,

:

Defendants. :

x

NOTICE IS HEREBY GIVEN that AMALIA HERBIRA ZORIANO
SANCHEZ, as personal representative of the estate of NICOLA HERNAN-
DEZ , Deceased, et al ,plaintiffs above named hereby appeal to the
United States Court of Appeals for the Second Circuit from the final order
and judgment of the Honorable Kevin Thomas Duffy, U.S.D.J. dated
January 27th, 1976, and signed by Honorable Raymond F. Burghardt, Clerk
on the same date, the Memorandum and Order of the Honorable Kevin
Thomas Duffy, U.S.D.J., dated January 20th, 1976, the Endorsement on
the motion for reargument by the Honorable Kevin Thomas Duffy, U.S.D.J.
dated February 18th, 1976, and the Order of the Honorable Kevin Thomas
Duffy, U.S.D.J. dated April 19th, 1976, and filed on April 21st, 1976,
granting judgment against the plaintiffs and in favor of the defendants
dismissing the plaintiffs' complaint.

Dated: April 28th, 1976

THOMAS M. BREEN
Attorney for Plaintiffs
Office & P. O. Address
160 Broadway
New York, New York 10038
Beekman 3-3740

1459

TO:

CICHANOWICZ & CALLAN, ESQS.
Attorneys for Defendants
80 Broad Street
New York, New York 10004

1469

RECEIVED

JUN 28 1976

CICHANOWICZ & CALLAN